International telephone services provided at a fixed location

Identification and Analysis of Markets,
Determination of Market Power and Setting of Remedies.

Consultation and Notification Document

9th October 2006

Contents

Executive Summary

The current regulatory framework for electronic communications networks and services which entered into force in Malta on the 14th September 2004 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 this framework are five EU Directives.

The 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, parts 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) proposal for the market review of the 'International telephone services provided at a fixed location' market. The national consultation is being carried out in parallel with the notification to the EU Commission. This document sets out the proposed market definition, analysis and SMP designations together with the proposed remedies.

Summary of Proposals

Identification of Markets

The group of products and services under consideration in this document consists of international telephony services provided at a fixed location. In Malta, these services are provided by a number of service providers but predominantly by the incumbent fixed telephony operator Maltacom.

In relation to these services, the MCA proposes to identify the following relevant markets in accordance with competition law principles:

1. Residential international telephone services provided at a fixed location.
2. Non-residential international telephone services provided at a fixed location.

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 Maltacom plc. should be designated as having significant market power in the above mentioned markets. The main reasons justifying the proposed designation are:

- market shares in excess of 80%;
- vertically and horizontally integrated provider;
- economies of scale and scope;

- overall size of the undertaking; and
- control over infrastructure not easily replicable.

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

Regulatory Implications

Given the position of dominance held by Maltacom plc in all of the markets for national telephone services provided at a fixed location – i.e. their ability to behave to an appreciable extent independently of competitors, customers and ultimately consumers – the MCA proposes to impose the following conditions:

Access to wholesale inputs

Access to wholesale inputs - Carrier Selection and Carrier Pre-selection, with associated remedies of non-discrimination, transparency, price control and cost accounting, and accounting separation

Retail remedies

1. Cost Accounting and Accounting Separation obligation
2. Transparency obligation
3. Non-discrimination obligation
4. Obligation not to Unreasonably Bundle services

The MCA is withdrawing the existing obligation of price control under the form of cost-orientation imposed on Maltacom.

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.

Chapter 01 – Introduction

A new European regulatory framework for electronic communications networks and services entered into force on the 25th July 2003. 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 five 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 regulatory regime and sets out fundamental rules and objectives across all the 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 entry into force of 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, transposed into national legislation through the Processing of Personal Data (Electronic Communications Sector) Regulations of 2003 and the Electronic Communications (Personal Data and Protection of Privacy) Regulations of 2003.

The 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 is divided in three main 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 outlining the guidelines on 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 by Article 7 of the Framework Directive and Regulation 6 of the ECNSR, the results of this market review and the proposed draft measures 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 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.

The MCA is hereby giving the opportunity to interested parties to comment on the draft measures, whilst at the same time carrying out its notification obligations to the EU Commission.

01.3 Liaison with Competition Authority

Under Regulation 10 of the ECRA, the analysis of the markets must be carried out in accordance, where appropriate, with an agreement with the National Competition Authorities.

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 is today initiating a two week consultation process with the OFC.

01.4 Scope of this Review

This review considers the markets for international telephone services provide at a fixed location in Malta, which includes all products and services which allow end-users to make international calls over a public telephony network.

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 international call services 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 level;

Chapter 03 presents MCA's market analysis for the international calls markets and outlines a preliminary view on whether these markets are effectively competitive or whether any undertakings enjoy significant market power.

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

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.

Chapter 02 - Market Definition

Regulation 10 of the ECNS provides that before a market power determination may be considered, the MCA must identify the markets which are, in its opinion, relevant for the purpose of ex ante regulation in Malta and analyse those markets. 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 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 time of this review, these changes are identified and discussed.

The Recommendation states in Paragraph 4 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 in assessing the markets is based on an analysis of competition levels 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.

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 electronic communications sector in Malta

As at June 2006 the total population of Malta stood at approximately 403,000. According National Statistics Office figures there are approximately 128,000 residential households and 30,000 non-residential units. These figures indicate the small geographic size of Malta and this is reflected in the relatively small-scale electronic communications services/networks available. Nonetheless, the electronic communications sector has in the past decade experienced a significant growth both in terms of the number of operators and the variety of services offered. A perceptible amelioration in the quality of delivery of such services has also been recorded.

Until 1990, the ability to call foreign numbers was only possible by using the incumbent's - Maltacom plc[3] - fixed telephone services via the public switched telephone network (PSTN). The incumbent has over the past decade developed its ubiquitous network from one predominantly focused on fixed-line telephone services to one which incorporates other types of electronic communications services including; data communications (including

[3] Hereinafter referred to as Maltacom

internet and VoIP), mobile telephony and wireless applications. Besides the traditional international call services through PSTN, Maltacom also offers three other international calling services, all based on IP technology.

As from July 2005, Maltacom subscribers have the option of using a Carrier Selection (CS) service, branded 'Ten21' for calling abroad at cheap rates. A subscriber wanting to use the service dials the CS code assigned to Maltacom followed by the international number to get connected. 'Ten21' phone calls are billed in the same monthly statements as line rental and the usage of other PSTN services.

Maltacom also offers a Voice over Broadband (VoB) product to its ADSL subscribers. The incumbent has also developed an international call services through the use of calling cards. A comprehensive description of the type of service is discussed later on in this chapter.

Consumers' choice vis-à-vis international call services was first extended in 1990 with the setting up of the first mobile infrastructure – Telecell Ltd[4] which offered mobile users the ability to make international calls, albeit at prohibitive rates. The second mobile operator, Mobisle Ltd.[5], started its operation in 2000 thus increasing the choice for end-users.

Another infrastructure with a ubiquitous coverage is the cable network operated by Melita Cable plc[6]. This is a typical hybrid fibre coaxial (HFC) cable network, the primary use of which is the delivery and provision of TV content. The company undertook a network upgrade in the late 1990s in order to render its network able to provide two-way communications. As a result, in 2000, it started offering high speed Internet access via cable modem. Furthermore, as from July 2005 the cable operator started offering a Voice over Broadband product branded as 'Hello', which enables its subscribers to make international calls at cheap rates.

A number of ISP have are also offering international VoIP calls services following the full liberalisation of the electronic communications market in January 2003.

02.2 Delineation of the international calls markets in Malta

The delineation of the markets is based on an analysis of demand and supply substitutability between different products and services which could potentially form part of the market under investigation. This section provides an analysis of the degree of substitutability between international call products and services in Malta, taking also a forward looking approach with respect to possible developments in the market under review.

2.2.1 National and international call services

In its Explanatory Memorandum to the Recommendation on Relevant Markets, the European Commission stated that 'in respect of outgoing telephone calls, end users do not perceive local, national and international calls to be substitutes for each other. Therefore, it can be argued that these constitute separate retail markets.

Demand Side Substitution

From a user's functional point of view, a call to an international number, regardless of the country being called, cannot be substituted by a national call. As stated in the Commission's

[4] The company later became Vodafone Malta Ltd.

[5] Operating under the brand name 'Go Mobile'. The company y is a fully owned subsidiary of Maltacom.

[6] Hereinafter referred to as Melita Cable

document mentioned above, the two types of calls are perceived by users to be different and therefore not substitutable.

With regards to the cost of retail calls, traditionally the price of international calls has been considerably higher than national calls. This difference has however decreased in recent years following reductions in international termination charges and also following the introduction of alternative call services such as IP based services. The cost of making an international call depends on the terminating destination of the call. Countries are usually grouped in a number of charging bands with the busiest routes usually commanding the cheapest rates.

Nevertheless, it is amply clear that a user cannot consider an international call substitutable to a national call.

Supply Side Substitution

When assessing supply substitutability between international and national calls, one has to consider whether an existing supplier of national calls would enter the market of international calls in response to a 5 to 10 per cent increase by a hypothetical monopolist of international call services.

Supply-side substitution would involve a national calls operator responding to a price increase in international calls by switching production and offering international calls. Such entry would require the national calls operator to establish international connectivity and furthermore enter into agreement with foreign operators to terminate its calls to destination. The MCA believes that nowadays, investment-wise, the termination of international traffic, especially the traffic passed over IP, is within the reach of most undertakings operating in the electronic communications market.

Preliminary conclusion

Given the ease with which an undertaking providing retail national calls can enter the market for retail international calls a certain amount of supply side substitutability already exists. Nonetheless, from a demand side substitutability perspective it is clear that national and international calls are not substitutable.

The MCA therefore considers national calls and international calls to be in separate markets.

2.2.2 International calls from mobile phones and traditional international direct dialling (IDD) calls

A user wanting to make international calls from home has the option of either using his fixed line or his mobile phone. The analysis of the extent to which a user would choose to make mobile calls rather than fixed calls has to take into consideration two scenarios. First, when the user is willing to substitute calls from a fixed line with calls from a mobile phone on a call-by-call basis, and a second scenario where the user decides to switch all calls-from-fixed to calls-from-mobile.

Demand-side substitutability

Functionality

As described in detail in the market review for fixed access services[7], there are several factors, which in the opinion of the MCA makes access and therefore calls originating from a mobile phone functionally different from a call originated from a fixed line. The most obvious feature is mobility, that is, that while one can access a mobile network irrespective of location, fixed services can only be accessed from a fixed point. In this sense, it is possible for users to substitute calls in one direction only, that is, by replacing calls from a fixed line with a call from a mobile phone but not vice versa.

Given the mobility constraint of fixed calls, it is appropriate to consider calls from a mobile phone to be functionally different from calls originating from a fixed line.

Prices

Due to the pricing structures of mobile tariff plans it is very difficult to compare the cost of mobile usage with the more straightforward fixed line tariffs. While access and calls are bundled together in the case of pre-paid mobile tariff plans, mobile post-paid charges include a bundle of minutes. Notwithstanding, customers will normally consider the billed cost of the call as being the cost associated with that particular call, and therefore one can compare the perceived cost of making a call from a fixed line with a call from a mobile phone.

Traditionally, prices for international mobile calls have been significantly higher than prices for international PSTN calls. The price schedule in **Appendix A** compares the cost of a 3-minute call to different countries, for a user using a PSTN and mobile (prepaid and postpaid) phone.

The figures show that the retail tariffs for calls to the ‘busiest routes’ are on a best deal basis at least 2.8 times more expensive for mobile calls as for PSTN calls. For example, a 3-minute call to the UK through PSTN costs LM0.27c whilst the same call from a mobile phone would cost the caller an average of LM0.81c to LM1.41 depending on the tariff scheme used.

However, this rule can be reversed for destinations that are not considered ‘busy routes’, like for example some east European countries and Japan . In these cases international calls can be cheaper of made from a postpaid mobile subscription rather than a PSTN phone. However, this is the exception rather than the norm.

The MCA is of the opinion that it is unlikely that customers are substituting international PSTN calls with international mobile calls. This is supported by traffic statistics which show that while international PSTN traffic has experienced a steady decline over the past three years, international outgoing mobile traffic has been stable at around 350,000 minutes a month with no signs of increase over the same time period. The decline in international PSTN traffic is compensated with increased VoIP traffic.

The MCA is of the opinion that the prices are such that even following a 5 to 10 per cent hypothetical increase in the price of PSTN calls, international mobile rates will remain, in general, at levels well above those of PSTN call charges. The MCA therefore considers that users will not substitute all their international fixed calls with mobile originating international calls within the timeframe of this review. The price premium that mobile calls carry is an indicator that calls from fixed line and calls from mobile phones are not subject to the same pricing constraint.

The MCA is therefore of the opinion that given the different functionality and tariffs of mobile calls, it is very unlikely that during the timeframe of this review customers would switch from making fixed originating international calls to mobile originating international calls.

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[7] Link to report http://www.mca.org.mt/library/show.asp?id=880&lc=1

Supply substitutability

When assessing supply-side substitutability between international calls from fixed and mobile phones, one has to consider whether an existing supplier of mobile calls would enter the market of fixed calls in response to a 5 to 10 per cent increase by a hypothetical monopolist of fixed international call services.

Supply-side substitution would involve a mobile operator responding to a price increase in fixed line originated international calls by switching production and offering fixed services. A mobile provider seeking to enter the market would need to provide a fixed access product that matched the price and quality of a fixed line. Such entry would require either the construction of an access network or the development of a wireless product that more closely resembled the fixed access product in terms of quality and price. The MCA believes that the high costs involved in developing nationwide fixed infrastructure render supply-side substitution unlikely during the timeframe of this review. Therefore the MCA considers that there is no real possibility for supply-side substitutability.

Preliminary conclusion

The MCA considers that international calls from mobile phones and international calls from a fixed line do not fall within the same relevant market.

2.2.3 International Voice over IP (VoIP) and traditional international direct dialling (IDD) calls

Demand Substitutability

Functionality

Since the full liberalisation of the electronic communications market in 2003, a number of new voice services, partially or wholly, using VoIP technology have been developed and promoted in Malta.

Different platforms are being used for the provision of such services according to the various business models chosen by the service providers. The MCA identified a number of alternative international call services being provided in Malta which can be classified under three broad categories:

1. PC-based international call services;
2. IP-phone based VoIP international call services; and
3. PSTN-dial VoIP international call services

Each of these categories is described below and each can be further subdivide in different models. All of these services can however be classified to fall within the ambit of VoIP services.

1. PC-based international call services

Such models require a PC and an Internet connection. There are two broad types of PC-based VoIP services:

a) VoIP services that only enable users to make calls to other PC users over the public internet, and

b) VoIP services that enable users to make calls to international E.164 numbers from their PC. In this case, the user enters into a commercial agreement with a local VoIP calls provider. Such provider may be a service provider other than the user's ISP or the broadband access provider.

The MCA is of the opinion that from a demand-side perspective both models are not functionally equivalent to traditional switched telephony services. Callers are required to have access to a PC, an appropriate software package as well as Internet access. These requirements in themselves could be enough to prevent sufficient substitution and therefore these types of services do not constrain fixed IDD call prices to competitive levels.

The MCA believes that at present, this is sufficient to prevent widening the market definition of retail fixed international IDD calls to include PC-based Internet telephony. Such services are clearly not suitable for computer illiterate persons, and households which do not have a computer or Internet connection at home. Besides, Internet broadband penetration in Malta is around 13% of population, thus limiting the number of individuals having access to PC-based VoIP services.

The MCA considers that PC-based models are not substitutable to the traditional IDD international call services and therefore constitute a separate market.

2. IP-phone based VoIP international call services

The MCA identified two types of services that make use of either an IP-phone or a standard telephone set connected to an Analogue Telephone Adapter (ATA).

a) International VoIP call services that require the subscriber to have a connection to the Internet

These international call services may only be provided or are only offered if the subscriber has access to the Internet. This internet connection will be provided either separately or bundled with the international VoIP call product. Generally such services are provided over broadband connections by VoIP call service providers that do not necessarily own a broadband access network (ADSL, Cable etc.).

As stated, in order to avail themselves of this type of service, users require an Internet capable ADSL/Cable or similar connection. The user simply pre-programmes the IP-phone/ATA to the desired VoIP service provider's specifications and connects it to the appropriate modem/connection. The user can then start making calls in a way similar to traditional telephony. Such VoIP services allow users to make calls to other users who have subscribed to the same service, and if interconnected, calls to other public telephone networks including international calls.

It is important to note that the VoIP service might be provided by one undertaking, the access to the public-Internet by another undertaking, and the ADSL/Cable connection (or similar) by yet another different undertaking.

The user opting for this type of services must have a public-Internet enabled broadband connection to be able to make international calls. Given that end-users will have to incur the start up costs for the purchase of a broadband/cable internet connection, the MCA believes that these additional costs would not constrain a hypothetical monopolists of fixed IDD call services from successfully increasing the prices of its calls.

b) International VoIP call services that are provided without the need for the subscriber to have a connection to the Internet

These VoIP call services are provided by undertakings that own a fixed access network and are therefore able to provide access lines directly to their customers. These undertakings are also able to provide their VoIP call services over channels that are different than those which carry say, broadband and/or television services.

Therefore, the undertaking is able to offer VoIP call services to users which have an access line connection irrespective of whether they are subscribed to a broadband connection or not. Moreover, in acquiring such a service, end users do not necessarily have to pay for a connection to the public-Internet but only for the access to the VoIP call service. Like traditional telephony, these services allow users to make calls to other users on the same network and, if interconnected, calls to other public telephone networks including international calls.

The MCA believes that the issue of access to a broadband public-Internet connection is, at present, sufficient to prevent widening the market of retail fixed international calls to include 'international VoIP call services that require the subscriber to have a connection to the Internet'.

In contrast the MCA is of the opinion that 'international VoIP call services which may be provided without the need of a connection to the Internet' as described above in (b) above should be included in the relevant market.

3. PSTN-dial VoIP international call services

The MCA identified two forms of PSTN-dial VoIP services providing international call services existing in Malta, being the 'CS/CPS VoIP' model and the 'Hybrid CS' model. These are discussed in turn below

a) CS/CPS VoIP model

This model allows the user to make calls via a preferred carrier. Calls are originated from the undertaking providing fixed access to the user and routed through the chosen service provider, in this case utilizing a VoIP gateway as the mechanism to provide the service. A user subscribed to the service would either dial a code in order to get access to the service provider (in the case of carrier selection), or have all the calls routed automatically to the VoIP service provider via Carrier Pre-Selection. Calls made via such services can either be conveyed by the service provider over the public internet, or else directly to a foreign IP-transit service provider able to terminate the traffic globally directly and/or via the public internet.

Maltacom 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 circuit-switched international calling facility. Consequently, Maltacom subscribers have the possibility of either dialling the international number as soon as they put their telephone off-hook, or as an alternative dial the carrier selection code 1021, followed by the international E.164 number. Subscribers are charged separately for these calls in their monthly telephone bill.

The MCA carefully assessed the equivalence of these services with the traditional IDD call services and has found sufficient evidence to conclude that these services are functionally equivalent to the traditional service. Furthermore, these services qualify as a 'traditional'

Carrier Selection/Pre-selection service and therefore should be considered as part of the market for international telephone services provided at a fixed location.

b) Hybrid CS model

In Malta, a number of Internet Service Providers providing international calls are using this method.

In order to use such service, a user buys a prepaid card or opens an account with the ISP offering the service. A user would then first need to make a local call from a fixed line or mobile phone to the ISP's number. The system authenticates the user via an allocated PIN[8]. Once authenticated, a dial tone is heard and the user dials the desired international number and is connected.

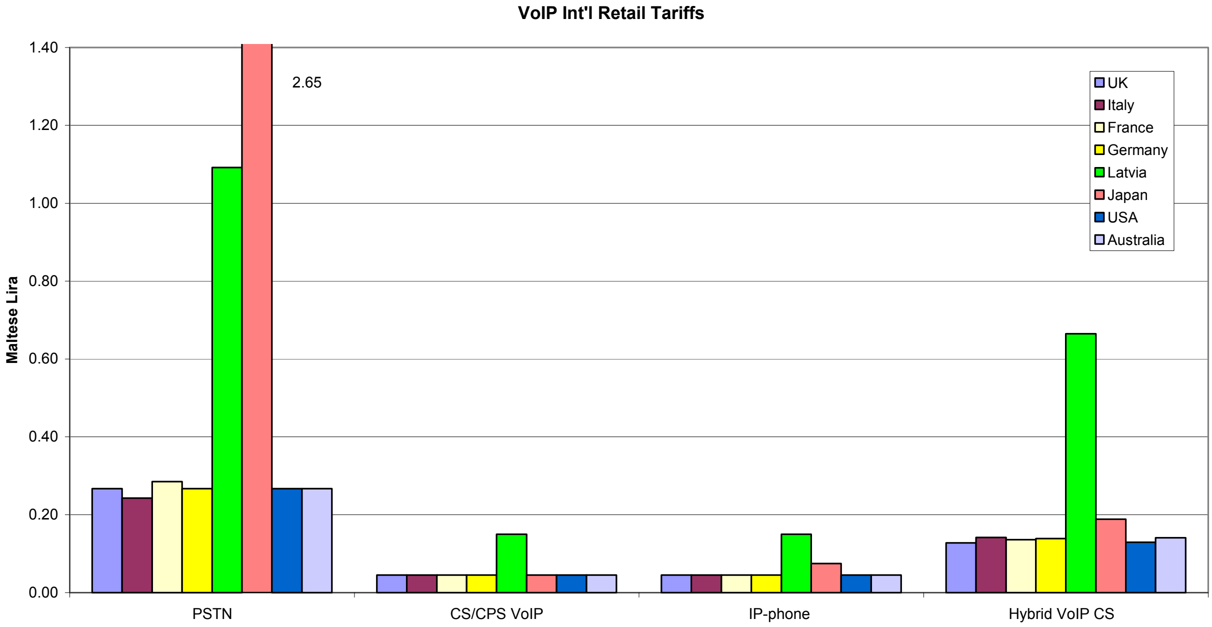
Unlike the pure CS/CPS model described above, the retail local call to the ISP is paid by the user to the telephony operator (PSTN or mobile) and is separate to the cost paid to the VoIP operator.

The MCA is of the opinion that these kind of services are very closely related to Carrier Selection services (although they require the user to be authenticated) and are therefore part of the product market. constraint

Pricing

The chart below has been extracted from the data contained in **Annex A** and shows the retail tariffs paid by users of fixed PSTN lines and VoIP-conveyed services for 3-minute calls to different countries. The graph shows that traditional international fixed calls are on average five times more expensive than IP-phone based VoIP / CS-VoIP calls and about twice as expensive as Hybrid-CS-VoIP calls.

[8] A variant of the service authenticates the user via the CLI number of his registered access line.



The MCA is of the opinion that price-wise VoIP-conveyed calls are, in general, substitutable to traditional PSTN international calls.

Supply-side substitutability

When assessing supply substitutability between traditional fixed IDD services and fixed international calls conveyed over VoIP, one has to consider whether an existing supplier of retail international calls conveyed over circuit-switched networks would enter the market for retail IP-conveyed international calls in response to a 5 to 10 per cent increase by a hypothetical monopolist of IP-conveyed international call services and vice-versa.

From an operator's perspective, switching to an alternative technology (circuit-switched or packet-based) entails two levels – the local leg and the international leg.

Technology switching on the international leg would require the traditional operator to re-deploy its international connectivity and start passing its international voice traffic in IP format to some IP-transit carrier able to terminate the traffic globally. On the other hand, a VoIP operator wanting to switch its traffic to traditional circuit-switched telephony similarly needs to re-deploy its international IP connectivity by establishing direct physical links (IPLCs) to termination countries and/or to transit carriers which are able to pass the conveyed calls to the terminating operators in the countries of destination. In the first scenario, the undertaking has to enter into an agreement with all the foreign operators it wishes to terminate its calls. The second scenario, which is being mostly used nowadays, is similar to the way local VoIP operators achieve international connectivity and is therefore simpler and more cost effective than the first method.

The MCA is of the opinion that the amount of investment required for an undertaking to transit and terminate its international traffic is similar in the case of international calls conveyed directly to an international transit carrier - circuit-switched or IP-based. In the case of traffic conveyed on the public Internet the investment cost may be less. The MCA believes that nowadays, investment-wise, the termination of international traffic is within the reach of most undertakings operating in the electronic communications market. The MCA is aware that fewer undertakings are choosing a circuit-switched solution to convey their international calls so it can be safely assumed that the more cost effective and cost efficient VoIP solution will be the preferred and most widespread technology during the timeframe of this review.

At the local leg, from next year all undertakings in Malta are expected to provide their international calls services over IP-networks. In fact the incumbent, Maltacom, is expected to upgrade its circuit-switched network to a packet-switched one by the end of this year. The soft-switch solution, which Maltacom is expected to adopt will evolve their circuit-switched core network to a multi-service network capable of carrying voice, enhanced services and packet-based broadband traffic. Therefore, as of next year there will be no undertakings in the country operating a circuit-switch network.

Nevertheless, following a 5 to 10 per cent increase by a hypothetical monopolist of international call services conveyed over circuit-switched technology existing providers of retail IP-conveyed international calls would find it difficult to switch to the 'older' circuit-switched technology. The higher investment costs, lower cost-effectiveness, lower flexibility for service provision, and the fact that it is a superseded technology which will not be maintained by manufacturers in the coming years further enhances this conclusion.

The MCA observes that in Malta supply-side substitution is happening with respect to the conveyance of traditional PSTN international fixed calls to IP-based conveyance. Substitution from IP-based transit to traditional transit switch conveyance is neither likely nor feasible to happen.

The MCA therefore concludes that there is one way supply-side substitution with respect to the conveyance of traditional PSTN fixed call services being substituted with IP-based conveyance.

Preliminary conclusion

The MCA considers that of all the international VoIP call services considered above the following services should fall within the market for international call services provided over fixed networks:

- traditional international IDD call services including PSTN[9], Carrier Selection and Carrier Pre-selection services;
- international call services provided without the need for the subscriber to have a connection to the Internet; and
- PSTN-dial VoIP international call services (CS/CPS VoIP and Hybrid CS).

2.2.4 Residential and non-residential international calls

Demand substitutability

In the market review of the fixed access markets[10] the MCA has defined separate markets for residential and non-residential access markets. The distinction was justified since operators are able to distinguish between the two types of customers based on a number of requirements when applying for the services. Operators are therefore able to adopt different pricing strategies for the two types of customers. Moreover, certain terms and conditions for

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[9] Including those provided over Next Generation Networks

[10] Link to report http://www.mca.org.mt/library/show.asp?id=880&lc=1

the provision of access services, such as billing arrangements, differ for residential and non-residential customers.

At present non-residential customers cannot switch to residential status following a hypothetical increase in the price of international fixed calls because undertakings are able to distinguish between customers and identify the use of each line, that is, whether it will be used as a residential or business line. Therefore, customers cannot choose which connection they want but are obliged to take the residential connection if it is to be used for residential purposes and the non-residential connection if it is for business use.

Supply substitutability

All operators in the market are already providing access and calls to both residential and non-residential customers. There are no existing operators providing call services to one type of customer only and which could start supplying calls to the other type if a hypothetical monopolist increases the price of international fixed calls.

In the case where new operators enter the international calls market during the timeframe of this review, the MCA expects that from past experience and also based on current pricing strategies applied for other electronic communications services, undertakings tend to differentiate between residential and non-residential customers. This would indicate that even in the hypothetical scenario where new entrants start providing call services, the distinction between residential and non-residential customers would still apply.

Preliminary Conclusion

The MCA therefore considers that residential international calls and non-residential international calls are in a separate relevant market.

02.3 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.

According to the EU Guidelines, in the electronic communications sector, the definition of the geographical scope of the relevant market is generally determined with reference to the area covered by a network, and to the existence of legal and other regulatory instruments.

Based on these definitions and the market conditions described earlier on the MCA takes the view that the relevant geographic market for the markets considered in this review are the Maltese Islands.

02.4 Preliminary markets

Following the analysis presented here the MCA is proposing to define the following relevant retail international fixed calls markets in Malta:

1. Residential international telephone services provided at a fixed location.
2. Non-residential international telephone services provided at a fixed location.

Chapter 03 - Market Analysis

Having identified the relevant markets as discussed in **Chapter 02** the MCA is required to analyse the market in order to assess whether any person or persons 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 EU Electronic Communications Framework, SMP has been 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 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 guidelines on SMP assessment. In the MCA 's view, the most important ones are:

- Market share analysis;
- Economies of scale and scope;
- Size of the undertaking;
- Control of infrastructure not easily duplicated;

- Vertical and horizontal integration; and
- Potential competition.

3.2.1 Analysis of market share

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 raise the presumption 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."

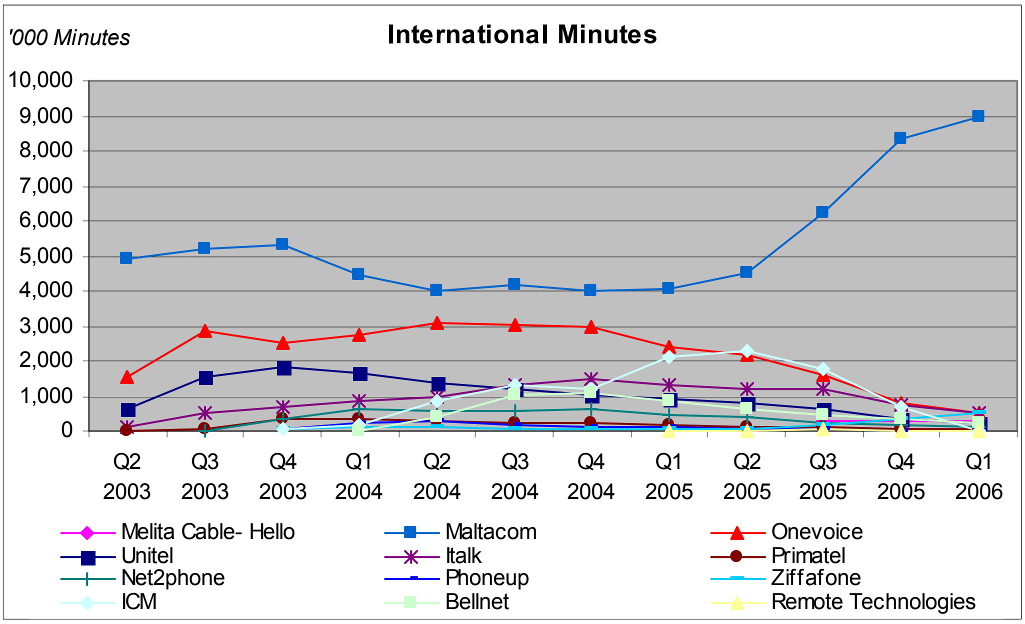
The markets for international calls have changed considerably during the past five years with an increased number of new entrants and new alternative solutions being lunched in the market.

Prior to 2003, Maltacom was the only fixed telephony operator present in the market and was the only provider of international fixed call services. Following the liberalisation of the electronic communications market in January 2003, a number of ISPs entered the market and started providing international call services through a Hybrid-CS VoIP service. During the earlier days of the launch of this service, the quality of the international call was not very good, however over time the quality has improved considerably and has become similar to that of a traditional PSTN international call.

In July 2005 the cable operator Melita Cable started offering an international IP based call service – Hello – provided over its bi-directional cable network. This service is independent of a broadband connection and therefore customers having only a cable access point at home can also avail themselves of this service by acquiring the necessary telephone set.

A few days following the launch of the Melita Cable's Hello service, Maltacom launched a similar IP-based CS service called 'Ten21' whereby the user can dial the prefix 1021 prior to the international number and the call will be conveyed over IP rather than the traditional PSTN. The cost of making an international call using Maltacom's 'Ten21' service or Melita Cable's 'Hello' service is identical.

The chart below depicts the evolution of international minutes since 2003 where the market saw the entry of a number of new undertakings.

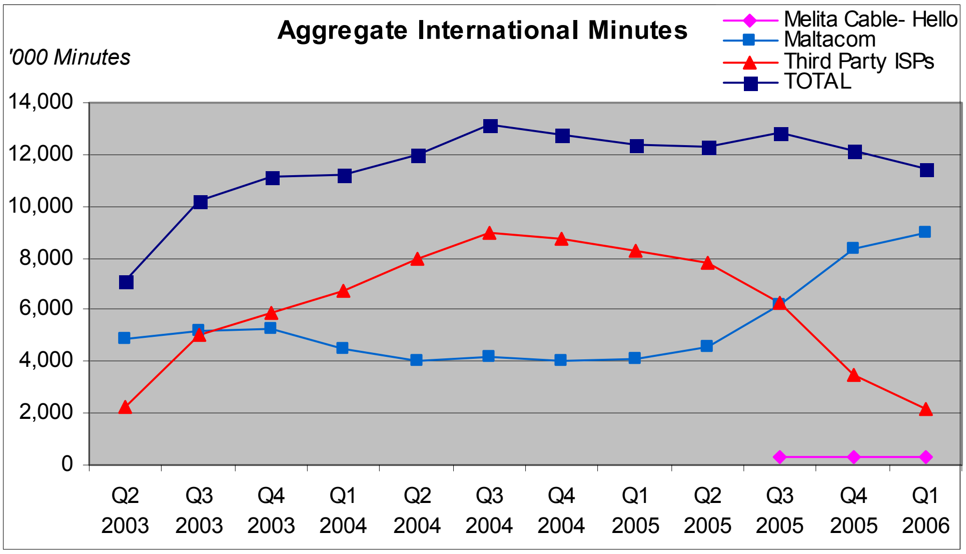


It is evident that following the liberalisation of the market, ISPs found a niche whereby they could enter successfully the international calls market. As stated earlier, prior to the market entry of the ISPs, Maltacom held a monopoly in the provision of international fixed calls. The cost of making an international call was very high with prices ranging from €0.58 to €6.17 per minute depending upon the country being called.

With their innovative Hybrid-CS VoIP product the ISPs were charging an average price of €0.06 per minute to most of the major countries around the world. In addition to this per minute cost, the user also incurs a standard local telephone call costing €0.12 per 5-minute pulse.

Although initially the quality of this service was poor, the take-up of the service was significant given the price differential between the traditional fixed call and the ISPs VoIP call service. In just five months from the launch of this service, Maltacom had already lost 40% of its market share in international traffic. As the quality of this VoIP services improved, the take-up has continued to increase.

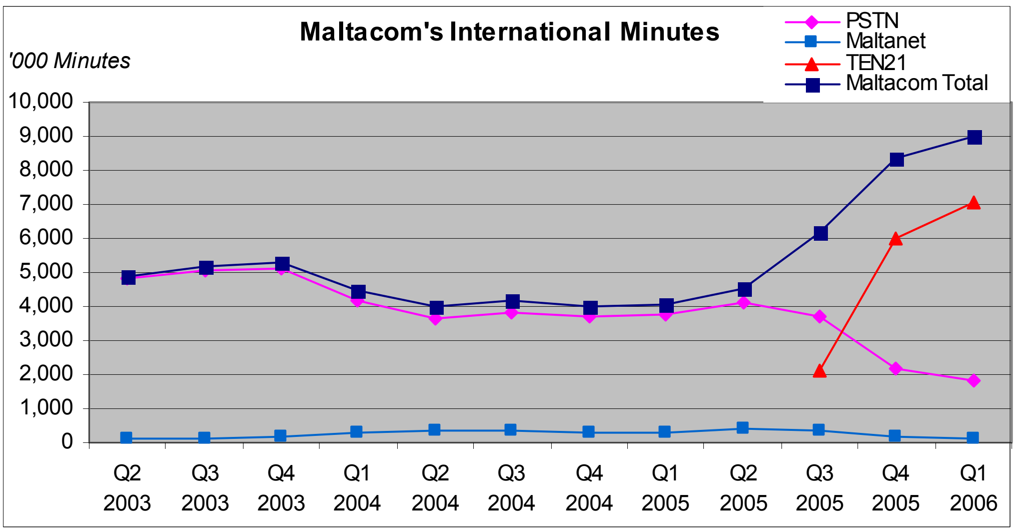
The illustration below shows that since the introduction of the VoIP service by the ISPs, the total number of international minutes has increased. This increase is largely attributable to the low prices charged by the ISPs as compared to the high prices charged by the incumbent Maltacom. Given these low prices, more people started to call abroad more frequently and to make longer calls.



In fact, as clearly shown above the total number of international minutes increased. Whilst Maltacom's traffic decreased, that of the ISPs increased dramatically from two million minutes in Q2 2003 to a peak of nine million in Q3 2004. This trend has continued up till Q2 2005 when Melita Cable entered the market with its Hello service and charged €0.035 per minute to all major countries. Soon after, Maltacom launched its 'Ten21' service charging the same price per minute due to fear of stiff competition from Melita Cable. The take-up of the Hello service has to date been very limited, whilst Maltacom managed to recoup its lost market share and also to erode nearly the entire share of the ISPs in just nine months since its launch if its Ten21 service.

Although Maltacom could have launched its IP based CS service way back in 2003, thus avoid losing minutes, it decide to wait till the entry in the market of Melita Cable. This strategy can be explained better when analysing in further detail the usage patterns of its subscribers.

The graph below shows the international minutes of Maltacom split by the type of international call service i.e. 'Ten21', traditional PSTN international calls, and Hybrid-CS VoIP services provided by its own retail ISP Maltanet.



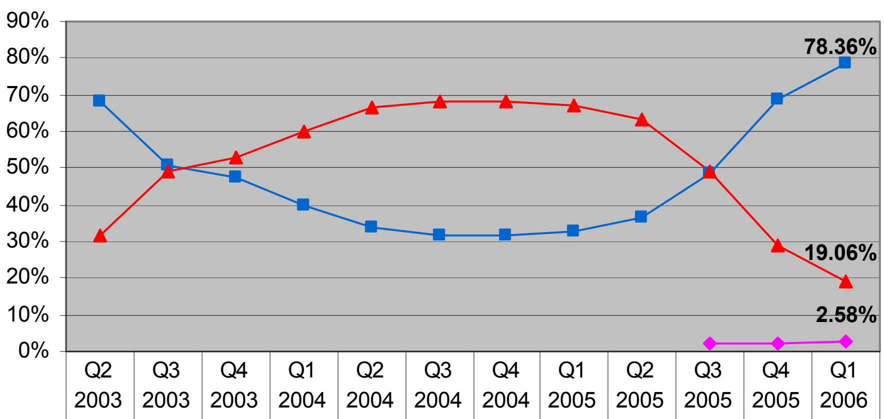
Maltacom’s PSTN international minutes decreased from 5 million minutes in Q2 2003 to less than 4 million throughout 2004 and Q1 2005. This decrease is attributable to the launch of third party ISPs cheaper Hybrid-CS VoIP call services. Third party ISPs managed to be more successful than Maltacom’s downstream ISP Maltanet since the latter has not actively marketed its product, not to contribute further to the decrease of traditional fixed line minutes of its parent company.

Since the introduction of the ‘Ten21’ service in July 2005, the total minutes of Maltacom increased impressively from 4.5 million in Q2 2005 to 9 million in Q1 2006, since customers started using this services rather than the VoIP services provided by the ISPs. The main reason behind this shift is the fact that the Ten21 service is a much more ‘user-friendly’ service for customers than the VoIP services of the ISPs. As opposed to the VoIP services, customers do not need to purchase pre-paid calling cards, enter long pin codes, and do not have time-windows by which they have to utilise their pre-paid credit. These factors have largely contributed to the success of the Ten21 service and the death of the Hybrid-CS VoIP call services.

Even though Maltacom has gained back its dominant position in the market, it is evident that with the launch of the ‘Ten21’ service customers are now also substituting the traditional PSTN call with a Ten21 call, since this is much cheaper and is of good quality. As depicted above since Q2 2005 the Ten21 services has registered an impressive growth, whilst the PSTN minutes decreased by 2 million minutes in just 6 months. It is therefore clear that the success of the Ten21 service has been gained at the detriment of the traditional PSTN traffic. This internal substitution will also have implications on the revenues of Maltacom since the cost of a PSTN call is much higher than that of a Ten21 call.

The diagram below depicts the aggregate market shares expressed in minutes. Prior 2003 Maltacom was the only operator providing international fixed call services and therefore it had a 100% market share. Upon entry of the ISPs the market share of Maltacom fell drastically in a few months reaching a low of 32% in Q4 2004. As from Q3 2005 Maltacom’s market share increased considerably following the launch of the Ten21 service reaching 78% in Q1 2006.

Market Shares - Minutes



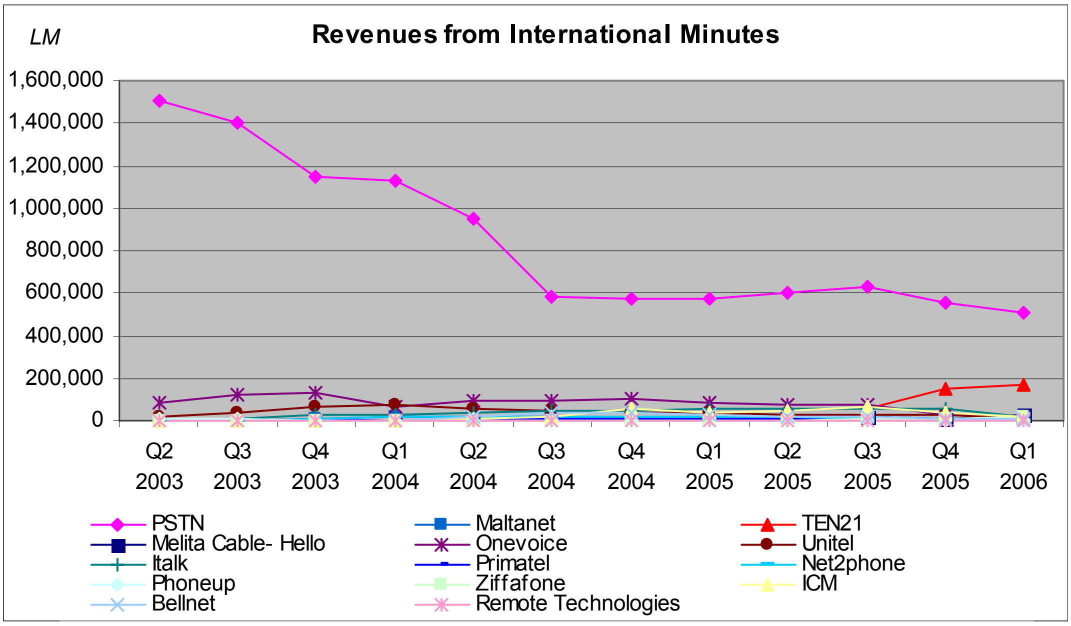
	Q2 2003	Q3 2003	Q4 2003	Q1 2004	Q2 2004	Q3 2004	Q4 2004	Q1 2005	Q2 2005	Q3 2005	Q4 2005	Q1 2006
Melita Cable- Hello										2.43%	2.36%	2.58%
Maltacom Total	68.41	50.78	47.33	39.77	33.60	31.89	31.59	32.87	36.80	48.47	68.83	78.36
Third Party ISPs	31.59	49.22	52.67	60.23	66.40	68.11	68.41	67.13	63.20	49.10	28.82	19.06

The trend above shows that notwithstanding the large number of operators in the market and the cheap prices offered by alternative operators, Maltacom has been able to re-establish its position of dominance in the market in a matter of few months by replicating the product offered by these alternative operators.

Given Maltacom's extensive infrastructure, it is amply clear that it can replicate in the short term and without excessive cost any services developed by alternative operators. Furthermore, Maltacom enjoys a more favourable position than alternative operators given that it is a horizontally integrated operator and is able to provide a full suite of services that can be utilised by nearly all households in Malta.

Revenues

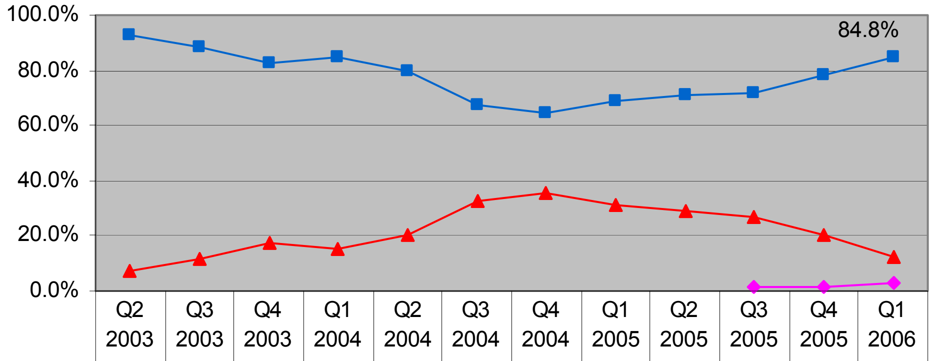
In terms of revenues from international call minutes, Maltacom remains at the lead of all other service providers. The diagram below depicts the revenues of all the individual providers of international call services.



Maltacom's revenues from PSTN services have decreased significantly from Lm1.5 million in Q2 2003 to Lm600,000 by the end of 2004. This drop was the result of consumers shifting their preference to the ISP's VOIP service and because in 2004 Maltacom reduced its international tariffs for the traditional PSTN calls. From the graph above it is also clear that following the introduction of the Ten21 service in Q3 2005 revenues took a further negative downward trend since Maltacom's subscribers started making cheaper Ten21 calls instead of the traditional IDD calls which carried higher cost. As a result of the significant reductions in costs of VoIP calls, the overall level of revenues for Maltacom decreased to a third of what it was in early 2003.

The graph below depicts the trend of market shares expressed in terms of revenues from international minutes. As clearly shown, Maltacom lost around 30% market share in revenues following the entry of ISPs, however, as soon as it launched the Ten21 service its market share started to increase again.

Market Share- Revenues



	Q2 2003	Q3 2003	Q4 2003	Q1 2004	Q2 2004	Q3 2004	Q4 2004	Q1 2005	Q2 2005	Q3 2005	Q4 2005	Q1 2006
Melita Cable- Hello										1.5%	1.5%	3.1%
Maltacom Total	92.6%	88.5%	82.5%	84.9%	79.5%	67.4%	64.8%	68.5%	70.7%	72.0%	78.4%	84.8%
Third Party ISPs	7.4%	11.5%	17.5%	15.1%	20.5%	32.6%	35.2%	31.5%	29.3%	26.5%	20.0%	12.1%

It is clear that Melita Cable's Hello service has had very little impact in terms of revenues, whilst the aggregate share of ISPs is significantly shrinking every quarter. Maltacom on the other hand has regained is dominance in the market with the launch of its Ten21 service.

The MCA is of the opinion that in the absence of regulation Maltacom would be able to exert a certain degree of market power in the international fixed calls markets for both residential and non-residential customers.

With a market share of 80% in terms of minutes and 85% in terms of revenues, it is clear that Maltacom enjoys a position of SMP in the international fixed calls markets. The MCA is of the opinion that Maltacom will likely to continue enjoying significant market power during the timeframe of this review. Nonetheless, the MCA will monitor closely any developments in these markets and will revise its analysis accordingly if the structure of the markets changes significantly.

3.2.2 Economies of scale and scope

For a significant number of years, Maltacom was the only operator providing fixed international call services to residential and non-residential customers in Malta. Given the ubiquity and the high density of this network, Maltacom enjoys economies of scale in the provision of fixed international call services. As depicted earlier on Maltacom has continuously enjoyed a greater volume of international minutes passed over its network than any other single operator in the market.

Furthermore Maltacom is a horizontally integrated operator providing multiple services over its network to the consumer. This enables the incumbent to benefit from economies of scope where the average costs of production for a product are lower as a result of it being produced jointly with another. Cost savings may be made where common processes are used in the provision of a group of services.

The ability of Maltacom to benefit from economies of scale and scope suggests that the incumbent is likely to enjoy the benefits of SMP in the provision of international fixed call services.

3.2.3 Overall size of undertaking

Undertakings having a large size relative to their competitors in a particular market may enjoy potential advantages, and sustain those advantages in a number of operational areas.

It is clear that Maltacom's size in relation to the individual ISP is substantial. Maltacom has a ubiquitous network capable to provide a full range of electronic communications services. More than 95% of all households are connected to its copper access network. Such a position in the market enables Maltacom to benefit from advantages in terms of provision of service, production capacities and marketing facilities.

On the other hand, ISPs have very few network elements and are heavily dependent on wholesale inputs provided by Maltacom. ISPs acquire international connectivity from Maltacom and their VoIP service is dependent on the local access network of Maltacom. Furthermore, no individual ISP is able to constrain Maltacom given their small size.

Melita Cable can in the future be a potential constraint to Maltacom given that the size of the cable network operator is also significant. The cable operator is a vertically and horizontally integrated operator and is able to reach 95% of all households with its cable network. Nevertheless, the low take-up of its voice call service limits the constraining effect on Maltacom.

3.2.4 Control over infrastructure not easily duplicated

Investing in electronic communications infrastructure is very often an extensive and costly exercise that may not be feasibly accomplished by a large number of operators. Such control may represent a significant barrier to entry for potential competitors and may also create the opportunity for the owner of the infrastructure to eliminate the possibility of a competitive market.

A large part of the investment required for the deployment of fixed networks is usually sunk costs, which are not recoverable on market exit. A potential entrant will therefore find it hard to incur such an investment to enter a mature market were the returns do not justify the initial investment. The incumbent on the other hand has already made its investment and would therefore be in a much better position to compete with the new entrant.

This is the case in the international fixed calls market whereby Maltacom owns a ubiquitous network able to provide a full range of service whilst the ISPs are dependent on Maltacom's inputs for the provision of all their services. If these services were to be discontinued, it would also mean that ISPs would not be in a position to provide VoIP call services.

The existence of ISPs, and therefore the provision of VoIP call services, is dependent on the access to the network infrastructure of Maltacom.

Furthermore, Maltacom's network enables it to design new products that other operators cannot provide (for example the Ten21 service). This gives Maltacom a distinct advantage since it is able to replicate services provide by its competitors, whilst the latter cannot.

3.2.5 Vertical and Horizontal Integration

Integrated operators are able to influence both upstream and downstream markets and also different horizontal markets. A new entrant in a particular market would find it more difficult to compete effectively with the integrated operator.

Maltacom is an integrated provider and operates at a wholesale and retail level in many electronic communications markets. The ability to lever market power from upstream to downstream markets and from one market to another may deter potential entry in these markets.

An integrated provider can hypothetically make it difficult for new entrants at a retail level to obtain the necessary inputs at a competitive price and therefore create an entry barrier at retail level. This is the case with the provision of wholesale inputs by Maltacom to third parties for the provision of the Ten21 CS service. ISPs have complained to the MCA that Maltacom, as a designated dominant operator, should grant access to wholesale inputs for the provision of the Ten21 service. The MCA has directed Maltacom to provide the necessary inputs to third party providers however the incumbent has appealed this decision and has to date not granted such access services.

In absence of regulation Maltacom can take the opportunity to lever its power in the downstream markets to hinder effective competition.

3.2.6 Assessment of the level of competition and future developments

Following the market entry of the ISPs the number of players in the market increased significantly. Prices have been slashed dramatically in a short period of time. Maltacom has in 2004 also reduced its tariffs although not matching the price of a VoIP call. For a period of two years therefore market was characterised by an increase in the number of service providers, new services being launched and a sharp decrease in price of international calls. Customers could therefore avail themselves of a selection of call services at cheap prices.

In July 2006 Melita Cable launched its VoIP Hello service, which triggered an almost immediate action by Maltacom fearing competition from its main rival. In a matter of days Maltacom launched the Ten21 CS service which similar to the Hello service.

Although the take up of the Hello service has been very limited (3500 subscribers) Maltacom did not risk losing any customers and reacted immediately to its rival. This is in stark contrast with the 'lack of action' taken in face of the stiff competition from the ISPs. Following the launch of the ISPs VoIP service Maltacom lost more than a million minutes every quarter to ISPs, however the latter did not take any action to recoup the lost minutes. It was only following the entry of Melita Cable that Maltacom launched its Ten21 service, something that could have been done when the ISPs entered the market.

Since the launch of the Ten21 service Maltacom has regained the lost minutes and also eroded away the significant share of the market of ISPs. This trend is increasing every month and is expected that the VoIP services offered by ISPs will soon die out. The existence of ISPs is also dependent on the regulatory obligations in the wholesale broadband access market. Should the obligation to provide wholesale broadband access be withdrawn it is even more likely that ISPs would not have the necessary inputs to provide broadband service and therefore will stop their operations.

This would effectively mean that the market would again be entirely dominated by Maltacom with Melita Cable possibly offering some level competition in the near future. However, this is subject to Melita Cable successfully providing a ubiquitous telephony service, which is in turn dependent on establishing an interconnection agreement with Maltacom, which to date has been refused by Maltacom.

Another potential development in the market will be 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. BWA network operators could potentially start providing VoBB services and offering wholesale call origination services over their network. However, the MCA considers that such a development would not have any material impact during the timeframe of this review since the rollout of a nation wide BWA network would be a lengthy and extensive process and no operator has yet started deploying the network or established any target date for launch of BWA services.

The MCA considers that although in the past there has been a significant move towards an effectively competitive market, recent developments have reversed such a move. Maltacom has been able to regain its dominant position in the market within a matter of few months and when it considered being appropriate.

Moreover, Maltacom given its network infrastructure is able to replicate any product offered by its competitors but the opposite is not possible. ISPs have requested Maltacom to provide wholesale inputs for its Ten21 service however the latter has to date not provided these services and Maltacom is appealing a decision of the MCA in this regard.

Furthermore, Melita Cable has to date not managed to establish an interconnection agreement with Maltacom, which is vital for the take up of its Hello service. Unless this interconnection agreement is signed Melita Cable will not be able to constrain Maltacom.

Given the recent developments in the market and the expected prevailing conditions in the market, the MCA concludes that Maltacom still enjoys an SMP position in the market. Such a position is also expected to be successfully maintained during the two year timeframe of this review, especially if the interconnection agreement with Melita Cable is not signed in the near future.

Nonetheless, the MCA is going to monitor closely the development of competition in this markets and will consider revising its conclusions if the market structure changes considerably.

03.3 Preliminary conclusions and SMP designations

The evidence presented above suggests that Maltacom, enjoys SMP in the provision of international calls services in the residential and non-residential markets.

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

- High market shares in terms of minutes and revenues;
- is a vertically and horizontally integrated provider supplying a full range of electronic communications services both at wholesale and retail level;
- the economies of scale and scope it enjoys in these markets; and
- the size of the undertaking.

Consequently, the MCA concludes that Maltacom should be designated as having significant market power in the following retail markets:

1. Residential international fixed telephone services
2. Non-residential international fixed telephone services

Chapter 04 – Regulatory Implications

As evidenced above, this market review has defined two relevant markets in Malta with respect to international telephone services provided at a fixed location. Following the market analysis the MCA has concluded that Maltacom has SMP in the said 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 Article 17 of the Universal Service Directive, 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.

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 Competition Problems

The MCA has identified three broad categories of existing and potential competition problems that arise due to the SMP enjoyed in the identified international fixed calls market.

4.1.1 Vertical Leveraging

Vertical leveraging is any dominant firm's practice that denies proper access to an essential input it produces to some users of this input, with the intent of extending monopoly power from one segment of the market (the bottleneck segment) to the other (the potentially competitive segment).

Maltacom, as a vertically integrated operator dominant in an upstream market may engage in pricing that gives rise to a margin squeeze. Furthermore, since it is able to access economies of scale and scope that are not so readily available to potential operators competing at the downstream level, may bring extra pressure to bear on the margins available for competing downstream operators. Maltacom may also resort to other price leveraging strategies such as price discrimination, predatory pricing and cross-subsidisation. Currently the traditional IDD PSTN charges which Maltacom may apply are regulated at a retail level and this has mitigated to a certain extent the aforementioned competition problems.

4.1.2 Horizontal Leveraging

Horizontal leveraging involves the dominant undertaking using its position in one market to exert undue influence on other markets.

The MCA identifies two major potential competition problems in this respect. Firstly, Maltacom could use its dominance attempt to drive its competitors out of the market by setting a price below costs in potentially competitive markets, while the losses are covered by profits from another market. Secondly, with particular reference to the *easyline* telephone service from Maltacom, a potential horizontal leveraging problem could occur with the bundling or tying of access services with international call minutes. Because this bundle cannot generally be replicated by most alternative operators, competitive concerns arise.[11]

4.1.3 Entry deterrence, exploitative behaviour and productive inefficiencies

Besides the leveraging issues discussed above, the MCA believes that the single market dominance enjoyed by Maltacom in the relevant markets concerned can give rise to a number of competition problems relating to entry deterrence, possible exploitative behaviour and productive inefficiencies.

The MCA notes that currently Maltacom's market share in retail international telephone services markets is around 80 per cent. Given the ubiquity and control over infrastructure not easily replicable, Maltacom enjoys economies of scale and scope in the provision if international call services. These economies may act as a barrier to entry.

Exploitative behaviour could take the form of measures taken to increase switching costs, exclusive dealing and predatory, excessive or discriminatory pricing. As stated above, at present the MCA regulates Maltacom's prices for traditional IDD telephone service which have to be cost-oriented, transparent and non-discriminatory.

04.2 Available Remedies

As mentioned above, MCA is obliged by the ECRA to impose an obligation on undertakings with significant market power. The MCA also has the obligation under Article 9(3) of the ECRA and regulation 10(4) of the ECNSR to act in pursuit of its statutory obligations to ensure adequate access, interconnection and interoperability of services. The remedies that are available to the MCA which may be imposed on undertakings designated as SMP are listed in regulations 18 to 22 of the ECNSR (Wholesale obligations) and regulations 37 to 39 of the ECNSR (Retail obligations) and are as follows.

[11] ERG, Common position on the approach to appropriate remedies in the new regulatory framework ERG (03) 30rev1 pg,36

- Obligation of access to, and use of, specific network facilities
- Carrier Selection and Pre-Selection
- Obligation of Non-discrimination
- Obligation of Accounting Separation
- Obligation of Transparency
- Price control and Cost Accounting obligations

04.3 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.

In view of the identified actual and potential competition problems arising from SMP in the market relating to retail international telephone services provided at a fixed location, the MCA is obliged to impose obligations on undertakings identified by it as having significant power on that market.

As mentioned earlier, the MCA believes, following the market analysis that replication of the incumbent's infrastructure is feasible over the long term. More specifically the MCA is of the opinion that Melita Cable's telephony service and the entrance of a Carrier Selection and Pre-Select operator could in the long term develop to provide competing international call service. For this reason, the remedies proposed by the MCA are aimed at assisting the transition process to a sustainable competitive market.

Accordingly, the MCA is taking due consideration of these developments and is proposing to impose on the SMP operator those appropriate obligations that it believes will encourage efficient investment and innovation and further promote competition in these markets.

In selecting the remedies to impose on designated SMP operator the MCA has considered the nature of the problem identified and, in accordance with the principle of proportionality, where necessary, will impose a range of remedies which are considered to be the least burdensome effective remedies. The MCA has also taken account of potential effects on any related markets

Finally, the MCA has done its utmost to ensure that the remedies chosen will be incentive compatible. This means that the MCA has selected and designed the remedies to be imposed in a manner that ensures that compliance with the remedy by the undertaking identified as having SMP outweighs the benefits of evasion.

It is unlikely that any single remedy can achieve this, so the remedies proposed below should be seen as a complementary suite which support and reinforce each other.

04.4 Proposed Wholesale Remedies

The MCA is of the opinion that the obligations it is proposing to impose are based on the nature of the competition problems it has identified in the relevant markets it is proposing to define, 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 shall issue directions to further fine-tune the proposed remedies to the needs of the market and, where the desired levels of competition in the market are deemed to have been reached, the MCA shall consider lessening the burden of the obligations and even withdrawing them altogether.

In the previous sections the MCA concluded that Maltacom holds SMP in the markets for international telephony services. Therefore, in order to bring the benefits of competition to the end-user, and to reduce market failures associated with foreclosure of the retail market, it is essential that competing operators can gain access to Maltacom's infrastructure. This implies that remedies should be imposed in order to provide alternative operators with sufficient access to inputs, so that all types of call services may be offered over the existing infrastructure.

4.4.1 Carrier Selection and Pre-Selection

Regulation 39 of the Electronic Communications Networks and Services (General) Regulations requires that where as a result of a market analysis, a relevant market consisting of the provision of connection to and use of the public telephone network at a fixed location is not effectively competitive, the Authority is obliged to impose Carrier Selection by means of a carrier selection code and Carrier Pre-Selection. The provision of these facilities shall carry cost-oriented pricing for access and interconnection. In addition, their direct charges to subscribers should not act as a disincentive to the use of such facilities.

This obligation was already previously imposed through the Telecommunications Services (General) Regulations, 2000, and continues to apply to Maltacom by virtue of Article 40 of the Electronic Communications (Regulation) Act. However, the MCA notes that it was not until December 2004, following the intervention of the Authority, that Maltacom published cost-oriented call origination prices in its Reference Interconnection Offer.

As mentioned above, Regulation 39(3) imposes the requirement that pricing for access and interconnection related to the provision of these facilities should be cost-oriented. The MCA believes that failure to impose the obligations set in this provision on Maltacom would not result in competition in the retail calls market.

The MCA moreover recognises that further intervention is required to continue to develop the Carrier Selection and Pre-Selection products. It is the view of the MCA that in order to have workable competitive Carrier Selection and Pre-Selection products the Authority's intervention in accordance to Regulation 21, is essential. The MCA believes that this will not be the case if it is left to commercial negotiations alone.

Further to the above set of obligations, which are either automatically mandated or which can be imposed by virtue of Regulation 39 on undertakings found to have SMP on the provision of connection to and use of the public telephone network at a fixed location, additional obligations should be imposed to address competition problems.

Given the problems mentioned above concerning the implementation of Carrier Selection and Pre-Selection, the MCA believes that it would be justified to impose the obligations relating to transparency (Regulation 18) and non-discrimination (Regulation 19) on Maltacom as well.

4.4.1.1 Non-discrimination

Where an SMP operator, like Maltacom, is also a vertically integrated provider, there may be an incentive to provide wholesale services on terms and conditions that discriminate in favour of their own retail activities in such a way as to have a material effect on competition. In particular, there are incentives to charge competing providers more for wholesale services than the amount charged to their own retail activities thereby increasing the costs of competing providers and giving themselves an unfair competitive advantage. Besides tackling price related competition problems, 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.

The MCA believes that an obligation of non-discrimination, as a remedy under Regulation 19, provides the same ability to alternative undertakings to obtain call origination at the same price, quality, and terms and conditions, which would apply to Maltacom's own retail arm, subsidiaries or partners. Moreover, the information and services related to the CS and CPS services should be provided in a similar fashion as those provided to its downstream retail service provider. In particular, it is important that information gained by Maltacom as a result of its provision of services to another operator is not used by its downstream activities in any manner to obtain any unfair advantage.

In order to ensure compliance with and monitor the non-discrimination obligation set on Maltacom, the MCA considers it is necessary to apply supplementary obligations of transparency and accounting separation.

4.4.1.2 Transparency

The MCA believes that it would be proportionate and justified to impose a transparency obligation on Maltacom to demonstrate that the incumbent delivers services of equivalent quality to other operators and its own retail activities. 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 Electronic Communications Networks and Services (General) Regulations empowers 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 is 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 Maltacom publishes as part of its Reference Interconnection Offer call origination pricing in relation to Carrier Selection and Pre-Selection. Under the obligation of transparency that the MCA is proposing, Maltacom will be obliged continue publishing reference offers related to Carrier Selection and Carrier Pre-Selection. Such offers are to be sufficiently unbundled, include pricing, terms and conditions and service level agreements, in any case as directed by the MCA. The level of detail and the manner of publication will continue to be tackled through consultative process. The implementation of this obligation may also require the publication of other information from time to time.

The MCA expects that any new offerings developed pursuant to Regulations 19, 21 and 39 should also be detailed in a reference offer.

4.4.1.3 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.

Such intervention in pricing can be used to move the market from a situation of monopoly to one this is effectively competitive and at the same time to support the obligations of non-discrimination and transparency.

In competitive markets, the price of services is driven down to competitive levels by the commercial judgement of the undertakings forming the market. However, where competition does not provide pricing constraints, it is necessary to prevent excessive pricing by means of regulation. Without some intervention in pricing, dominant providers are likely to charge excessive prices, in order to maximise both their profits and the costs of competing providers. Higher wholesale charges are likely to mean higher retail prices and alternative operators being less able to compete in the retail market at the detriment of end-users.

Pricing Methodologies

The MCA has concluded that Maltacom's dominance in this retail market is unlikely to be eliminated over the timeframe of this review. It has therefore found Maltacom to hold significant market power and thus proposed that Maltacom should be directed to provide Carrier Selection and Carrier Pre-Selection. With regards to the pricing for access and interconnection related to these facilities, Regulation 39(3) states clearly that these should be cost-oriented. Therefore the present cost obligation on Maltacom is to be maintained.

Cost accounting systems

As stated above, the pricing for access and interconnection related to Carrier Selection and Pre-Selection is regulated by Regulation 39(3) which states that such prices should be cost-oriented. The Authority believes that a cost accounting system will be necessary to support such an obligation and is therefore proposing to impose this as a further obligation on Maltacom.

The MCA is of the view that if it does not impose such an obligation, Maltacom could maintain some or all of its prices at an excessively high level, or impose a margin squeeze so as to have adverse consequences on competing operators and end-users. If the MCA 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 this obligation will constitute an unreasonable burden on Maltacom given that the company is already under the obligation to support such a system by virtue of a previous MCA decision[12] and that this has already been in place for some time.

The MCA therefore proposes the maintenance of the existing level of cost accounting system obligation on Maltacom until such time that any further consultation on the issue are deemed necessary.

4.4.1.4 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 that Maltacom is providing services to other operators under the same pricing conditions as provided for its downstream arms.

Separated accounts help disclose possible market failures and provide evidence in relevant markets of the presence or absence of discrimination and margin squeeze. Such obligations support the imposition of transparency as it makes visible the wholesale prices and internal transfer prices of an 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 introduction of the obligation of accounting separation to facilitate the verification of compliance.

The MCA proposes that the existing level of accounting separation on Maltacom as identified under its decision on Accounting Separation[13] is to be maintained until such time as any further consultation is needed.

The MCA believes that if it were withdraw this obligation, it would not have any means of monitoring non-discrimination or of having any information on margins in the retail business.

04.5 Proposed Retail Remedies

Until an operator is identified as having SMP in a particular relevant market following a market analysis procedure, Article 40 of the Electronic Communications (Regulation) Act requires undertakings to continue to comply with former obligations. Regulation 30 of the Telecommunications Services (General) Regulations of 2000 required a dominant operator providing fixed telephony services:

- to use cost oriented-tariffs;
- not to bundle services into a single tariff without also offering each of the constituent services under separate tariffs;
- to publish its tariff charges.

The Authority was also entitled to define and impose a price control cap formula, geographical averaging or other price regulation schemes for services that are provided in

[12] Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision - July 2002

[13] Accounting Separation and Publication of Financial Information for Telecommunications Operators - Report on Consultation and Decision of October 2002.

markets which lack effective competition. Moreover, tariffs shall be transparent and non-discriminatory.

Under the new electronic communications framework, where a market analysis leads to a determination of an operator as having SMP status in a particular retail market and the Authority concludes that obligations imposed under Part III or Regulation 39 would not result in the achievement of the objectives set out in Article 4 of the Act, the Authority shall impose obligations to ensure that the undertaking concerned does not:

- charge excessive pricing,
- inhibit market entry or restrict competition by setting predatory prices,
- show undue preference to specific end-users, or
- unreasonably bundle services.

In order to counter these problems and protect end-user interests whilst promoting effective competition, Regulation 37(3) lets the Authority impose:

- appropriate retail price cap measures
- measures to control individual tariffs, or
- measures to orient tariffs toward costs or prices on comparable markets

On the basis of what has been stated earlier on in this document, the MCA deems that the imposition of the above-mentioned wholesale remedies is necessary in order to achieve the desired level of effective competition in the retail international calls markets. This notwithstanding, the MCA feels that the proposed wholesale remedies will not, by themselves, suffice to bring about the objectives set out in Article 4 of the ECRA mainly due to the uncertainty of the impact that the wholesale remedies will have in rendering the market effectively competitive. The MCA feels that, unless the said wholesale remedies are further supplemented by the retail measures being proposed below the objectives set out in Article 4 of the ECRA will not be attained.

The MCA considers that the market requires the imposition of the retail remedies, mentioned in Regulation 37 of the ECNSR as explained below. Having said this, the MCA will however continue to constantly monitor market developments. Where it deems appropriate, the MCA shall issue directions to further fine-tune the proposed remedies to the needs of the market and, where the desired levels of competition in the market are deemed to have been reached, the MCA shall consider lessening the burden of the obligations and even withdrawing them altogether.

4.5.1 Measures to counter the charging of excessive pricing and countering measures that inhibit market entry or restrict competition

Cost-Orientation for Retail Prices

There is currently a general obligation of cost-orientation for retail fixed voice telephony services, with respect to the operator holding a dominant position. This obligation ensures that the said operator does not charge excessive prices for specific services, nor does it 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.

In the market analysis section the MCA carried out an assessment of the likely future developments in the market and the prospects of moving towards an effectively competitive market.

The MCA believes that replication of the incumbent's infrastructure is feasible over the long term. With the introduction of Melita Cable's telephony service and the entrance of operators offering carrier selection and pre-selection, Maltacom could in the long term be faced by competing international call infrastructures and services. Although such a development will not, in the short or medium term, significantly detract from the significant market power enjoyed by Maltacom, the MCA believes that remedies imposed should be aimed primarily at assisting the transition process to a sustainable competitive market.

In this light, the MCA notes that the main potential competition problems in the markets in question are those targeting new entrants and consist mainly in predatory pricing, cross-subsidisation and margin squeeze. The MCA believes that these competition problems will be adequately addressed by the imposition of the transparency, non-discrimination and accounting separation obligations imposed on Maltacom below. The threat of long term potential competition at this point should reduce incentives on Maltacom to charge excessive pricing indiscriminately for international fixed calls.

For this reason the MCA believes that the current retail price control obligation imposed on Maltacom under the form of cost-orientation, is no longer necessary. Instead, potential competition problems relating in particular to predatory pricing, cross subsidisation and margin squeeze will be restrained by the imposition of alternative remedies referred to below. The MCA believes that this approach will allow for new entrants to compete on a level-playing field and will in the long term promote the development of sustainable competition in the market.

The MCA is therefore proposing to withdraw the existing retail price control obligation on Maltacom. Nevertheless, the MCA will consider revising this conclusion should the need arise.

Cost Accounting and Accounting separation

In order to ensure that the SMP operator does not engage in cross subsidisation practices and to complement the transparency obligation, Maltacom shall continue to operate and maintain a cost accounting system, the format and accounting methodology of which may be specified by the MCA, including related regulatory accounts, that are based on generally accepted accounting practices, suitable for ensuring compliance with retail obligations, and capable of verification by the MCA.[14]

Furthermore, compliance by Maltacom with a cost accounting system, including related regulatory accounts, referred to above shall be verified by a qualified independent body approved by the MCA. For this purpose, the MCA may carry out an audit itself, or it may require an audit to be carried out by a qualified body, independent of the undertaking concerned.[15] Maltacom is also obliged to publish in its annual accounts a statement concerning compliance by it with a cost accounting system that is in line with the abovementioned requirements.[16]

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[14] Regulation 37(5) and (6)

[15] ibid. subregulation 7

[16] ibid. subregulation 8

The MCA deems that accounting separation is also necessary in order to enable the MCA to monitor Maltacom's actions against market squeeze or other forms of exercise of its market power to influence other markets by, for example, leveraging into related markets. In this light, the MCA considers that the imposition of an obligation of accounting separation upon Maltacom is justifiable, proportionate and based on the nature of the problem identified.

4.5.2 Measures to counter undue preference to specific end-users

Non-discrimination

It is widely recognised that, as a result of their market power, SMP operators may act discriminately with the consequence of causing considerable harm to effective competition in the market. Such discrimination may take various forms, including price offers, information, or conditions of supply.

Under the legal framework currently in force, Maltacom is obliged to charge transparent and non-discriminatory tariffs, which shall be appropriately published. Moreover, it is obliged to guarantee equality of treatment except for objectively justifiable restrictions compatible with national or international regulation.

The MCA is of the opinion that the continued imposition of this remedy on Maltacom is necessary and justified.

Transparency

Closely linked with the requirement of non-discrimination is that of transparency. The two remedies may in fact be said to complement each other in ensuring that the SMP operator does not act incoherently when providing a retail service.

Under Regulation 41 of the ECNSR the MCA shall ensure that transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to end-users and consumers. Information relating to the identity and contact details of the operator, the description of the service and what is covered by the charge being levied, standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes, the compensation and, or refund policy, the types of maintenance service offered, standard contract conditions, dispute settlement mechanisms and end user rights as regards universal service ought to be published by the operator.[17]

Moreover, the MCA shall encourage the provision of information to enable end-users, as far as appropriate, and consumers to make an independent evaluation of the cost of alternative usage patterns by means of, for instance, interactive guides.[18]

In accordance with Regulation 40 of the ECNSR an undertaking providing connection and, or access to the public telephone network is obliged to provide its subscribers with a written contract containing a number of minimum specifications[19]. Any proposed changes to the

[17] Regulation 41(1) and Ninth Schedule of the ECNSR

[18] Regulation 41(2) of the ECNSR.

[19] These relate to the identity and address of the supplier, services provided, the service quality levels offered, as well as the time for the initial connection, the types of maintenance service offered, particulars of prices and tariffs

conditions of the contract must be notified to the subscriber not less than thirty days prior to their taking of effect, together with the notification that the said subscriber may withdraw without penalty from such contract.[20]

The MCA is of the opinion that in view of the principle of transparency, Maltacom should continue to have the obligation to inform the MCA of any modifications to terms and conditions including tariffs, prior to their coming into effect.

4.5.3 Measures to counter the unreasonable bundling of services

One of the major concerns of the MCA as guarantor of effective competition in the retail international calls markets is the ability of Maltacom as an SMP operator to bundle its retail products by leveraging into related markets and distorting pricing. On the other hand, the MCA recognises that such bundling of retail products may lead to economies of scale or scope for the operator and this in turn can lead to savings to the consumer.

In considering the above, the MCA deems that there is a need to counter the risk of anti-competitive behaviour through bundling by means of an obligation to be imposed on Maltacom over and above those mentioned earlier on with respect to transparency. The main aim of such obligation would be that of preventing foreclosure of the relevant markets.

One must note that under the regulatory regime currently in force, and which will remain in force until the finalisation of the market analysis and identification of SMP in the market, operators providing telephony services having a dominant market position are already obliged not to bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs unless they would have obtained the MCA's prior approval[21].

In line with this approach, the MCA feels that it will benefit the competitiveness of the retail international calls markets if this obligation continues to be imposed on Maltacom to the effect that the said operator shall not unreasonably bundle services.

Such remedy would be imposed without prejudice to the rest of the proposed remedies that are to apply across the board irrespective of whether products and services are bundled or otherwise. Moreover, such obligation should apply irrespective of the nature of the services that are being bundled with the services falling within the retail international calls markets.

04.6 Summary of obligations

Given the position of dominance held by Maltacom in the residential international telephone services provided at a fixed location market and the non-residential international telephone services provided at a fixed location market , the MCA proposes to impose on Maltacom the following obligations:

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and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, the duration of the contract, the conditions for its renewal and termination of services and of the contract, any compensation and the refund arrangements which apply if contracted service quality levels are not met, and the method of initiating procedures for settlement of disputes.

[20] Article 22(4) of the ECRA.

[21] Regulation 30(1)(ii) of LN 151 of 2000.

Access to wholesale inputs

Access to wholesale inputs - Carrier Selection and Carrier Pre-selection, with associated remedies of non-discrimination, transparency, price control and cost accounting, and accounting separation.

Retail remedies

5. Cost Accounting and Accounting Separation obligation
6. Transparency obligation
7. Non-discrimination obligation
8. Obligation not to Unreasonably Bundle services

The MCA is withdrawing the existing obligation of price control under the form of cost-orientation imposed on Maltacom.

04.7 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.

Appendix A

Tariff comparison in Maltese Lira (Lm) for a 3-min peak call

	PSTN	Mbl Av post	Mbl Av prep	Ten21/iPhone	Hello	Card-Avr
UK	0.27	0.81	1.41	0.05	0.05	0.13
Italy	0.24	0.81	1.41	0.05	0.05	0.14
France	0.28	0.81	1.41	0.05	0.05	0.14
Germany	0.27	0.81	1.41	0.05	0.05	0.14
Latvia	1.09	1.05	1.62	0.15	0.15	0.67
Lithuania	1.09	1.05	1.62	0.15	0.15	0.44
Japan	2.65	2.27	3.38	0.05	0.08	0.19
USA	0.27	0.68	1.79	0.05	0.05	0.13
Australia	0.27	0.87	1.79	0.05	0.05	0.14

Key

PSTN	Traditional IDD international call service provided by Maltacom
Mbl Av post	Average rate of all post-paid tariff plans for both mobile operators
Mbl Av prep	Average rate of all pre-paid tariff plans for both mobile operators
Ten21/iPhone	Average rate for VoIP international call services provide by Maltacom
Hello	Average rate for the VoIP international call service provided by Melita Cable
Card-Avr	Average rate for the VoIP international call services provide by ISPs