Price Control Review

Consultative Paper

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1 Introduction

1.1 Background to Price Control

The Malta Communications Authority (MCA) is responsible for the regulation of the Maltese telecommunications sector in accordance with the powers and duties conferred on it by the Telecommunications (Regulation) Act and subsidiary legislation enacted under this Act.

The Act provides that until such time as telecommunications markets become subject to effective competition, tariffs for telecommunications services shall be regulated by the MCA in order to ensure that such tariffs are just, reasonable and promote the interests of consumers and other users of telecommunications services in Malta.

The Act provides that the MCA may issue proportionate and non-discriminatory directives and establish rate control mechanisms in respect of tariff control policies. In the absence of such provisions, an operator wishing to make a change in an existing rate or to provide a new service must submit the rates it proposes to charge to the MCA for its approval.

1.2 Objectives

The purpose of this document is to obtain the views of interested parties on the methodology and approach to developing a price control policy which promotes the interests of consumers and users of telecommunications services, stimulates effective competition, and encourages efficiency on the part of organisations providing such services.

This consultative paper is related to other MCA documents including the following:

- Dominant Market Position in Telecommunications

Organisations having a Dominant Market Position ("DMP") have a number of advantages over any emerging competitor. These include the information they have about the market and customers, their reputation and brand name, their financial and intellectual property, and other resources. These organisations are subject to a set of obligations in order to ensure, amongst others, that barriers to entry are not maintained.

- Implementation of Cost-Based Accounting Systems

This consultative paper sets out the principles the MCA proposes to use for allocating revenues, costs, assets, and liabilities across the separated accounts. This exercise will be the foundation for determining cost-based interconnection charges.

- Accounting Separation

This exercise is important because it will lead to more reliable data for setting any future price controls. It will also help establish how far any "tariff rebalancing" is justifiable or necessary in terms of the requirement that prices be cost-oriented.

The MCA recognises the need to communicate its strategy on the subject of price control and recognises the importance of consultation and input from all interested parties. The purpose of this document is to obtain the views of all interested parties on the subject.

This document is without prejudice to the legal position or the rights and duties of the MCA to regulate the market generally. This is not a legal document; the MCA is not bound by this document and may amend it from time to time.

2 Legislative background

2.1 Telecommunications (Regulation) Act

The subject of price controls is specifically regulated by article 19 of the Telecommunications (Regulation) Act. This article addresses tariff controls and rate mechanisms. It states that tariffs in respect of telecommunications services in markets or market segments which are, in the opinion of the MCA, subject to effective competition should be established by the operation of the market.

The provisions of this article of the Act apply to all telecommunications services and do not distinguish between different services on the basis of their nature or technology. This article does not distinguish, for example, between mobile and fixed telecommunications services. The law introduces a distinction which is based on the level of competition in the market for the provision of such services[1]. A number of regulations enacted under this Act also regulate the different telecommunications services separately.

Article 19 provides that in markets or market segments which in the opinion of the MCA lack effective competition, tariffs shall be subject to proportionate controls and regulations which may also grant power to the MCA to issue proportionate and non-discriminatory directives as it may deem appropriate[2].

Where no such regulations have been issued to regulate such markets, tariffs shall be regulated in accordance with rate mechanisms or, in their absence, by applying for the MCA's approval on the instance of introducing new tariffs or making changes thereto[3].

The Act further provides that the MCA may establish rate mechanisms allowing for changes in the tariffs to be made in respect of telecommunications services[4]. A rate mechanism becomes superseded on the publication of subsequent orders or regulations, without prejudice to its validity in respect of any preceding period, with regard to the market or market segment to which the order or the regulation refers[5].

Where a tariff has not yet been established, or where an operator wishes to make a change in an existing tariff not provided for in an existing rate mechanism, the

1 Cap 399, Article 19.(1)(i)
2 *ibid*, Article 19.(1)(ii)
3 *ibid*, Article 19.(1)(iii) and Article 19.(3)
4 *ibid*, Article 19.(2)
5 *ibid*, Article 19.(1)(iv)

operator must submit the proposed charge in respect of any service it is authorised to provide to the MCA for its approval[6].

The MCA may either communicate its approval to the operator[7] or notify the operator with the reasons for its rejection, in which case the operator may either appeal such decision to the Telecommunications Appeals Board or propose other tariffs acceptable to the MCA. If the MCA does not reject the proposed rates within sixty days from their submission, the rates will be deemed to have been approved[8].

Operators are also required to forward to the MCA, and the MCA shall, unless it rejects any of them register, the terms and conditions including approved tariffs for the provision of telecommunications services. Upon registration, the terms and conditions registered become binding on the operator and on any person accepting the provision of such services. The operator may make changes to these terms and conditions subject to the approval and registration by the MCA[9]. All terms and conditions registered by the MCA are open to inspection by the public during normal office hours[10].

Operators may not engage in any cross-subsidisation with respect to telecommunications services provided in competition with other operators, or to subsidiaries or affiliated businesses[11]. Any such contraventions are dealt with exclusively by the MCA irrespective of whether they constitute unfair trading for the purposes of the Competition Act. The MCA may consult the Commission for Fair Trading as to the measures to be taken in the circumstances; and the authorised provider must comply with any directives the MCA may issue on the matter[12].

The obligations and duties of operators as set out in the Act are without prejudice to any term or condition contained in the authorisation (whether a licence, permit or other form of authorisation) adding any obligation or duty on the operator, and any such additional obligation or duty shall have effect as if it were imposed by the Act[13].

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6 *ibid*, Article 19.(3)
7 *ibid*, Article 19.(4)
8 *ibid*, Article 19.(5)
9 *ibid*, Article 19.(6)
10 *ibid*, Article 19.(7)
11 *ibid*, Article 19.(8)
12 *ibid*, Article 19.(9)
13 *ibid*, Article 19.(10)

2.2 Telecommunications Services (General) Regulations, 2000[14]

Regulations 30, 31 and 32 of the Telecommunications Services (General) Regulations address the subject of price controls on telecommunications services[15]. Regulation 9 also refers to this subject within the context of competition rules.

Regulation 30 lays down that an operator providing telephony services (other than mobile) having a DMP must use cost-oriented tariffs which it is obliged to publish. It may not without the consent of the MCA bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.

This regulation entitles the MCA to define and impose price cap formulae and other regulation schemes on operators for services provided in markets which lack effective competition. The MCA may choose not to apply controls over the tariffs of operators that do not have a DMP, or in respect of services that are provided in market segments which are subject to effective and efficient competition.

Tariffs must be transparent and non-discriminatory, appropriately published, and guarantee equality of treatment except for justifiable restrictions compatible with national or international regulation. Tariffs relating to telephony services (other than mobile) must be independent of the type of application which the users implement except to the extent that different applications require different services and facilities.

Tariff changes can be implemented only after a public notice period of thirty days has been observed. The regulations also establish that the MCA shall allow an operator of public fixed telecommunications systems and services with a DMP to proceed with tariff re-balancing for telephony services taking into account the need to ensure the affordability of services.

Regulation 31 mandates that an operator providing telephony services (other than mobile) having a DMP must propose changes to its tariffs for approval to the MCA at least fifteen weeks prior to their intended effective date. In such cases the operator must provide support based on costs and other factors for its proposed tariffs. Other operators and customers must also be given the opportunity to make representations. The MCA is required to give its decision on such changes within six weeks of receiving the required information.

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[14] Legal Notice 151 of 2000 as amended by Legal Notice 70 of 2001, hereafter "the Telecommunications Services (General) Regulations".

[15] Regulations 30, 31 and 32 will come into force on a date yet to be determined.

Regulation 32 addresses the subject of tariff controls for mobile services. The regulation lays down that, in principle, such tariffs are to be established by the operator but the MCA may impose tariff regulations if necessary to reach objectives of national interest such as consumer protection, fair competition and the implementation of open network provisions.

This regulation further establishes that the MCA may implement tariff controls through the fixing of price control limits, reference to benchmarks, or other schemes for some or all services until competition provides effective price regulation.

The MCA may also require an operator to provide support based on costs and other factors for its proposed tariffs, and the MCA may offer an opportunity for comment upon the proposed tariffs by other operators and by customers. Where the MCA decides that it is necessary to exert tariff controls for mobile services, it is required to give a decision about the proposed tariffs within six weeks.

Regulation 9 deals with the application of competition rules in the telecommunications sector. It provides that operators may not do anything which has the effect or intention of preventing, restricting or distorting competition. In this context the Regulation includes the imposition of unfair prices or trading conditions by an operator having a DMP, cartel behaviour, linked sales, and predatory cross subsidies.

2.3 Cable Systems (General) Regulations, 2001[16]

Regulations 11 and 12 of the Cable Systems (General) Regulations address the subject of tariff controls on cable television and radio services. Regulation 9 also refers to this subject within the context of competition rules.

Regulation 11 establishes that an operator providing cable television and radio services having a DMP must use cost-oriented tariffs which it is obliged to publish. It may not without the consent of the MCA bundle a number of non-cable TV services into a single tariff without also offering each of the constituent services under separate tariffs.

This regulation also entitles the MCA to define and impose price cap formulae and other regulation schemes on operators for services provided in markets which in its opinion lack effective competition. The MCA may choose not to apply controls over tariffs of operators that do not have a DMP or in respect of services that are provided in market segments which, in its opinion, are subject to effective competition.

[16] Legal Notice 167 of 2001, hereafter “the Cable Systems (General) Regulations”.

Tariffs must be transparent and non-discriminatory, appropriately published, and guarantee equality of treatment except for justifiable restrictions compatible with national or international regulations. Tariff changes can be implemented only after a public notice period of thirty days has been observed.

Regulation 12 mandates that an operator having a DMP must propose changes to its tariffs for approval to the MCA at least fifteen weeks prior to their intended effective date. In such cases the operator must provide support based on costs and other factors for its proposed tariffs. Other operators and customers must also be given the opportunity to make representations. The MCA is required to give its decision on such changes within six weeks of receiving the required information.

Regulation 9 deals with the application of competition rules to the cable systems and services market. It provides that operators may not do anything which has the effect or intention of preventing, restricting or distorting competition. In this context the Regulation includes the imposition of unfair prices or trading conditions by an operator having a DMP, cartel behaviour, linked sales, and predatory cross subsidies.

2.4 Rate Mechanism to be applied to Certain Telecommunications Services, 1998[17]

The Rate Mechanism to be applied to Certain Telecommunications Services published in 1998 applies to charges for certain fixed telecommunications services designated as “rate controlled services”, namely:

- Usage charges for national and international Calls;
- Initial one-off charges for the installation of telecommunications services;
- Standing periodic charges for the rental of a subscriber line; and
- Charges for the provision of national and international leased lines.

[17] Government Notice No.332 of 1998 as amended by Government Notice No.425 of 1998, hereafter “the Rate Mechanism of 1998”.

The Rate Mechanism of 1998 came into effect on the 1st of January 2000 for a period of six years. It establishes a Control Factor which is calculated in accordance with the formula:

$$CF \quad = \quad (1 - X) \times (1 + RPI_{t-1})$$

Where,

CF	is the Control Factor;
RPI_{t-1}	is the Retail Price Index[18] in the year prior to the relevant year, expressed as a percentage; and
X	is a productivity index, expressed as 2%.

The rate mechanism establishes that an operator providing the rate controlled services must ensure that the average charge for such services shall be less than or equal to the average charge for the previous year multiplied by the Control Factor. The average charge for the rate controlled services is calculated on the basis of the total individual charges for the rate controlled services, weighted by the proportion of the revenue attributed to each service to the total revenue earned from all services. In calculating the average charge for the rate controlled services in a particular year, the individual charge for each rate controlled service should not include any rebate that had not been notified to the regulator by the end of September of that same year.

Under this rate mechanism an operator is to notify the regulator, within 14 days after the beginning of every year, of the charge for each rate-controlled service at the beginning of that year. An operator should also notify the regulator of any changes to the charge for the services during the year. The regulator determines whether the changes meet the requirements of the rate mechanism, and if not, the regulator has the power to notify the operator to make such adjustments as may be considered necessary in order to meet those requirements.

Should there be a material change in the Retail Price Index which has an adverse affect on an operator, the latter may propose to the regulator an adjustment to the Control Factor or to the manner in which the Control Factor is determined. The regulator may approve the proposed adjustment or propose an alternative adjustment. The adjustment will have effect from a date to be notified by the regulator in the Government Gazette.

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[18] The formula published in Government Notice No.425 of 1998 should read "ΔRPI_{t-1}" (Rate of Inflation) and not "RPI_{t-1}" (Retail Price Index). This will be corrected in any revised controls as proposed in Section 4.4. For the purposes of this consultative paper only, the description of the Rate Mechanism of 1998 is based on the corrected formula.

The Rate Mechanism of 1998 did not have any effect on the charges for rate controlled services because the rate of inflation was approximately equivalent to the productivity index and, as a result, the Control Factor calculated on the basis of the above formula[19] was close to 1. The current control is discussed further in Section 4.3.1 below.

2.5 Competition Act

The Competition Act was enacted to regulate competition and provide for fair trading in Malta. It applies to all markets, including telecommunications.

Article 5 of the Competition Act prohibits any agreements between undertakings or concerted action having the object or effect of preventing, restricting, or distorting competition within Malta. Such practices may include, amongst others, the direct or indirect fixing of the purchase or selling prices or of other trading conditions.

Article 9 of the Competition Act prohibits the abuse by an undertaking of a dominant position. Such abuse may include, amongst others, the direct or indirect imposition of an excessive or unfair purchase or selling price or of other unfair trading conditions, and the practice of charging prices which are below the average variable cost price of a product in order to drive rival competitors out of the market.

Maltacom plc is listed in the "Exemption Order for the purpose of Article 30 of the Competition Act" [20]. Article 30 applies to organisations in which the government has a controlling interest or to organisations to which government has granted special or exclusive rights in any field. The Exemption Order provides that Maltacom plc is exempted from the provisions of the Competition Act, but specifically excludes all its subsidiaries from this exemption.

The exclusive rights that Maltacom plc enjoys in providing fixed telecommunications and international gateway services will terminate on 31 December 2002. Furthermore, government has already stated its intention to dispose of its controlling interest in this company[21]. As a result Maltacom will no longer qualify for such an exemption.

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[19] The Control Factor for the years 2000 and 2001 is equivalent to:
2000: (1-2%) x (1+2.13%) = 1.000874
2001: (1-2%) x (1+2.37%) = 1.003226

[20] Legal Notice 241 of 2001, hereafter "the Exemption Order".

[21] *vide* section *Privatisation* under the heading *Structural Reforms* of "Budget Speech 2002", Department of Information.

3 The Purpose of Price Control

3.1 Introduction

One of the principal objectives of the MCA is to promote the interests of users of telecommunication services in terms of quality, choice and value for money. Competitive markets are the best way of achieving this objective. Although the telecommunications market is being fully liberalised, the present level of competition is still in its infancy and the full benefits of a competitive environment have not yet been achieved.

In forming a view on the need for price control the MCA will take into consideration:

- The degree of market power of those organisations now operating in the telecommunications market;
- The prospects for the development of effective competition in the markets for different telecommunications services;
- Any disadvantages of price control in relation to the objectives of the liberalisation policy;
- The adequacy of other methods for preventing the abuse of market power.

The MCA believes that, until such time as there is effective competition in the market, price control is an effective means of protecting consumers, and that the extent of regulation should be appropriate to the level of competition in the market. While excessive regulation can reduce incentives to invest and innovate, a failure to regulate where needed can harm consumers' interests.

This consultation is the first step taken by the MCA in the process of assessing the need and method for future price controls in the context of a developing market.

3.2 Liberalisation of the Market

The current major players in the telecommunications market are as follows:

Market	Operators
Fixed Telephony and International Gateway	Maltacom plc
Mobile Telephony	Vodafone Malta Limited Mobisle Communications Limited (Go Mobile)
Cable Services	Melita Cable plc

Maltacom plc is currently the exclusive provider of fixed telephony and international gateway services, and its present monopoly runs until 31st December 2002. It is therefore evident that there is currently no competition for services provided under the exclusive licence and that there are substantial barriers to entry.

The market for mobile telephony services was a monopoly held by Vodafone Malta Limited until Go Mobile commenced operations in December 2000.

Melita Cable plc is still the only provider of cable systems and services but its statutory monopoly ended when this market was liberalised on 1st June 2001.

3.3 The Implications of a Dominant Market Position

Organisations with a DMP have a number of advantages over any emerging competitors. These include the information they have about the market and customers, their reputation and brand name, their financial and intellectual property, and other resources. Furthermore a dominant operator has the potential to act strategically to deter entry or to dislodge nascent competitors and to retain or grow its business in markets where it is less strong, for example through cross-subsidisation, bundling of services, or tie-ins.

The DMP framework exercises constraint on behaviour by organisations having a DMP that might thwart the development of competition. Operators who are designated by the MCA to have a DMP are subject to a set of obligations on matters such as quality of service, transparency, non-discrimination, cost orientation, interconnection and control over retail tariffs[22].

3.4 The Role of Competition Legislation

The provisions of the Competition Act in respect of pricing have been discussed in section 2.5 of this document. There are, however, difficulties in using competition law to deal with excessive or predatory prices. First, the Competition Act can only be brought into play when an allegedly excessive price or predatory price has been charged (*ex post*). In contrast, price control aims to prevent the charging of excessive prices from the outset (*ex ante*).

Secondly, jurisprudence dealing with such investigations is very complex. The complexity is exacerbated when applied to the pricing of telecommunications services where timely intervention is required. Accordingly such investigations can be very costly and in the end may not produce sufficient evidence to prosecute or provide a remedy in a timely manner.

3.5 The Need for Price Control

Sector specific price control has the advantage that it can prevent the setting of high prices, as opposed to general competition legislation which can only be invoked once high prices have been set and after the abuse of a dominant position can be attested to.

The regulation of prices will also smoothen the transition to a competitive environment. New competitors may seek to compete by “cream skimming” the more attractive parts of the market served by the incumbent. This in turn would make it more difficult for the incumbent to continue serving the less remunerative parts of the market. If prices were not regulated, organisations with a DMP could be expected to reduce prices for services where they faced vigorous competition, and to recover revenue “lost” from these price reductions by raising the relative prices of services where they have little prospect of competition.

There are obvious uncertainties in predicting the rate of growth of competition in a market, particularly when that market is subject to rapid change. New technology and the convergence of telecommunications, broadcasting and computing technologies will offer many opportunities for competition.

Furthermore, although price controls over telecommunications services may be required, some markets will be subject to a higher degree of competitiveness

[22] See “Dominant Market Position in Telecommunications”, MCA, 2002.

than others. Consequently the form, scope and duration of price controls over different telecommunications markets will vary.

As a result the MCA believes that each of the following telecommunications markets should be regulated separately in respect to price controls:

- Fixed Telecommunications Services;
- Mobile Telecommunications Services;
- Cable Services.

Q-i: **Do you agree that the three telecommunications markets identified above require separate control mechanisms based on the degree of competitiveness in each respective market?**

4 Fixed Telecommunications Services

4.1 Introduction

Maltacom plc holds an exclusive licence to provide fixed telephony and international gateway services in Malta. Until a few years ago Maltacom held exclusive rights to provide these services until 2010. Following the approval by Parliament in 2000 of certain amendments to the Telecommunications (Regulation) Act and of the National Plan for the Reform of the Telecommunications Sector[23], a new licensing regime came into force. Under the new licensing regime Maltacom's exclusive rights will terminate on 31st December 2002.

4.2 Competition in the Market

Given Maltacom's exclusive rights, there is currently no competition and the market is a monopoly. Under the provisions of the NPRTS, Melita Cable plc will be in a position to apply for a licence to provide public fixed telecommunications services over its network as from 1st January 2003. Melita Cable, Vodafone and Go Mobisle will have the possibility to provide international gateway services as from 1st January 2003.

Although competition in the market may increase, the fact that the incumbent operator has an absolute DMP in the sector confers significant advantages as discussed in Section 3.3. As a result it is not plausible to envisage an immediate transition to competition in a short period of time. This view is strengthened by the fact that incumbents in EU countries continue to have a near-absolute DMP notwithstanding the liberalisation of the market for a number of years. However, an effective competition review requires a detailed study based on several indicators. Overseas national regulatory authorities have attempted to draw a comprehensive list of indicators, for instance the indicators adopted by Oftel in the UK are illustrated in Appendix II. Such a study may form the basis of future price control reviews as the market develops and becomes more complex.

[23] Schedule (Article 44) to the Telecommunications (Regulation) Act, added by Act XVIII of 2000, hereafter "the NPRTS".

4.3 The Scope and Form of Control

The transition to a competitive environment requires regulatory controls on prices due to the reasons set out in Section 3.5. Retail tariffs for the provision of certain fixed telecommunications services are already regulated by the Rate Mechanism of 1998 described in Section 2.4.

In reviewing the scope and form of the price control in force, the MCA starts from the view that an effective control should:

- Encourage the rapid development of effective competition in the supply of fixed telephone network services;
- Encourage the incumbent operator to respond imaginatively to changing demands and technology in the way it provides and prices its services;
- Capture as much of the benefits as possible for the consumer on a sustainable basis i.e. without threatening the efficiency, incentives or the viability of the incumbent operator; and
- Give the incumbent operator the incentive to make the greatest possible gains in operating efficiency.

Price controls can be applied to tariffs in respect of:

- Individual services;
- Baskets of services; and
- Particular groups of customers.

The first natural question is whether the current control satisfies the above criteria, whether the right services are currently covered and the right tariffs and customers protected.

4.3.1 The Current Control

The Rate Mechanism of 1998 was signed by the Telecommunications Regulator on 23rd April 1998. At that time it was foreseen that Maltacom's exclusive rights would expire in 2010. The principal purpose of this control was to restrict price increases in a monopoly market, and it was not designed to be a tool for the purpose of smoothing the transition from a monopoly to a competitive market.

In the context of the imminent liberalisation of the market, the scope of the Rate Mechanism of 1998 suffers from the following shortcomings:

- it is limited to a general basket of services,
- it does not provide for control over individual tariffs (in the form of sub caps) and therefore it is not very effective as a mechanism for tariff rebalancing,
- the rate of inflation must reach exceptionally low levels for the mechanism to yield any reductions in the price for the services covered[24],
- the productivity index of 2% is therefore not effective for the purpose of encouraging any productivity gains by the incumbent,
- it does not identify that particular groups of customers may require greater protection than others,
- the formula published in the Government Gazette is incorrect and unenforceable because it uses the Retail Price Index instead of the Rate of Inflation (which is the *change* in the Retail Price Index).

As a result the MCA believes that the Rate Mechanism of 1998 should be replaced by another form of control which exercises control more appropriately, in particular given the reality that the market will imminently be opened to competition.

[24] Under the Rate Mechanism of 1998, a Control Factor lower than 0.99 is possible only if the rate of inflation falls below 1%. Rates of inflation for the past 5 years are reproduced as follows:

	1997	***1998***	***1999***	***2000***	***2001***
Malta *(source: National Statistics Office)*	3.11	2.39	2.13	2.37	2.93
EU-15 *(source: Eurostat)*	1.7	1.3	1.2	2.1	2.4

4.4 Alternative Controls

4.4.1 The Form of Control

The Rate Mechanism of 1998 established a Control Factor which is calculated in accordance with the formula described in Section 2.4 above. Under a revised price cap the formula may be simplified to the standard widely used ΔRPI-X model as follows:

$$CF \quad = \quad 1 + (\Delta\ RPI_{t-1} - X)$$

Where,

CF	is the Control Factor;
$\Delta\ RPI_{t-1}$	is the change in the Retail Price Index in the year prior to the relevant year, expressed as a percentage; and
X	is a productivity index[25].

As an alternative to the ΔRPI-X price control formula it may be possible to implement a system of case-by-case submissions to the MCA for price adjustments. Such adjustment would be considered on the basis of cost justification taking into consideration input cost changes, inflationary effects, cost of capital and other relevant criteria impinging on the relevant operators' operational cost structures and taking into account operational efficiencies.

4.4.2 Control over a Broad Basket of Services

The current control applies to the telecommunications services described in Section 2.4 above. Under a revised price cap it is envisaged that the following telecommunications services (other than mobile) be subject to control:

- Initial one-off charge for the installation of a telecommunications service,
- Standing periodic charges for the rental of a subscriber line,
- Usage charges for National Calls,
- Usage charges for International Calls,

[25] Establishing the level of X is discussed later in this paper. For illustrative purposes only, if X had to be defined at 4% the control would require the average tariff for the basket of services to decline by at least 4% below the rate of inflation. A negative result would warrant a decrease in tariffs.

One change from the previous basket is that usage charges for the making of National and International Calls are considered as two separate items because they represent distinct services. Another significant difference is that national and international leased lines are to be regulated separately under an alternative form of control. The prices charged for leased lines can be separately addressed in order to ensure cost orientation and non-discrimination in a relatively shorter timeframe than other services.

It may also be appropriate to introduce other services in the price cap (e.g. payphone calls, internet calls etc). The introduction/parting of services into/from the mainstream price cap will depend on the development of effective competition in the market. At the current stage of development of the market it is planned that a price cap regulates only the basic telecommunications services. The MCA is interested in the views of respondents on possible services to be considered.

4.4.3 Control over Individual Services

The current control does not provide that separate additional controls should be applied to the individual services within the controlled basket. Under a revised price cap it is proposed to impose a further constraint, such that the tariffs for an individual service within the basket would also be related to the annual percentage change in the Retail Price Index. This would be achieved by subjecting individual services to a sub cap. These services would be subject to a different level of control, denoted as X_2 and representing a separate restraining factor[26]. Individual services might be subject to different individual levels of control.

4.4.4 Control over Low-Volume Bills

The current control does not identify that particular groups of customers may require greater protection than others. To protect the most vulnerable users who make few calls, it might be necessary to place an additional control relative to the rate of inflation in the previous year. This could be achieved by subjecting the low-volume user bill to another sub cap. The low-volume user bill may be defined as the bill of the bottom quartile (percentile 25) or the bottom median (percentile 50) of users. Alternatively a decision on what constitutes a low-volume bill might be taken once at the outset of the control. The low-volume bill would be subject to a further level of control, denoted as X_3 and representing a

[26] Establishing the level of X_2 is discussed later in this paper. For illustrative purposes only, if X_2 had to be defined at -2% the control would limit the increase in the individual tariff to 2% below the rate of inflation. A negative result would warrant a decrease in tariffs.

separate restraining factor[27]. The purpose is to protect the interest of low-volume customers and ensure affordability of service.

4.4.5 Level of Control

The level of control is principally defined by the magnitude of:

- the Productivity Index (X) to be applied for the purposes of the price cap on the general basket of services; and
- the Restraining Factors (X_2, X_3) to be applied for the purposes of the price cap on the individual services within the controlled basket and on low-volume bills respectively.

The level of control needs to reflect both the level of Maltacom's efficiency relative to a best practice frontier, and the rate at which that frontier is changing. The final decision will also need to consider how rapidly prices should be adjusted to reflect the cost levels of an efficient operator.

Ideally a full analysis of underlying costs and efficiency will be required to set the level of control. The process will also involve consultation with Maltacom in order to set acceptable and realistic targets. The key stages in the process will involve:

- establishing robust estimates of Maltacom's capital costs; that is the sum of depreciation and the required rate of return on its asset base;
- obtaining good data on the operating costs of different services;
- reaching a judgement on the efficiency gains Maltacom can be expected to make.

The level of control would then be set so that Maltacom is expected to cover its costs (including the costs of its capital employed) over the period of the control. Whilst the work on cost-based accounting systems and accounting separation will contribute to this picture, these projects are still in the initial stages and will not provide detailed information in the short term. Consequently where the MCA does not have sufficient information available, reliance may have to be placed on other information as considered appropriate e.g. estimates, benchmarking etc.

[27] Establishing the level of X_3 is discussed later in this paper. For illustrative purposes only, if X_3 had to be defined at –1% the control would limit any increase in the low-volume bill to 1% below the rate of inflation. A negative result would warrant a decrease in tariffs.

Overseas experience suggests that where there has been a public sector monopoly, there may be scope for large cost reductions. For example, in both the UK (where price cap regulation began in 1984) and Australia (where it began in 1992), successive reviews have often increased the requirement for cuts in telecommunications prices relative to prices more generally.

The possibility of cost reductions is supported by:

- the scope technology offers to reduce costs, e.g., in providing access;
- the gradual development of competition which will stimulate performance;
- the planned sale by government of its controlling interest in Maltacom, which will make it a private sector company and should assist the Board to make Maltacom an increasingly innovative and dynamic company;
- growth in the volume of call traffic, so the fixed costs are spread over more services;
- overseas experience, where apparently demanding efficiency targets for telecommunications companies have been easily achieved.

This process which will lead to the setting of the level of control is now under way (including the implementation of cost-based accounting systems and the preparation of separated accounts as noted in Section 1). The level of control would be also be subject to review at regular intervals. Meanwhile the MCA is inviting interested parties to forward their views on the matter.

4.4.6 Carry-Over

An operator may exceed the price reductions required by a price cap in any particular year. Such an eventuality may occur due to competitive pressures following liberalisation. The rate mechanism may include provisos which permit the operator to carry-over to subsequent years:

- Reductions which exceed those required under the price cap; and
- Increases which are less than those permitted under the price cap.

The MCA's view is that some carry-over should be allowed. There are two options in setting the manner in which this may be allowed:

- Allow carry-over only at the discretion of the MCA; or
- Allow automatic carry-over of over-achievements above the target, so that Maltacom can reduce prices by less the following year or years than it would have to if the price cap was applied strictly on an annual basis.

4.4.7 Tariff Rebalancing

Whatever the continuing level of performance gain expected, a decision has to be made as to whether to specify an initial cut in the level at which prices are capped. Price reduction targets in subsequent years would then be lower.

The starting point in this debate is that where a company has enjoyed a long period of public sector monopoly status, it is likely to have led to a degree of legacy costs in the organisation, and prices for consumers may be set on a discretionary basis rather than objectively cost-orientated.

An alternative to a once-off adjustment in the initial price base is for the relevant adjustments to be spread over the period of a control - over and above the annual targets representing the scope for future productivity improvement. This may be a more appropriate response to initial inefficiency than reducing the initial price base, particularly if two conditions were met:

- if the longer adjustment period treated Maltacom more fairly and helped the necessary efficiency gains to be achieved in an orderly and sustainable way;
- if the longer-term gains to customers, through encouraging increased competition in the immediate term, outweighed the loss of having to wait longer for Maltacom to approach an efficient level of costs.

If a detailed study showed prices to be substantially divergent from costs, allowing the adjustment to be spread over the duration of the control will better reflect the need to manage change and the value of stability in prices as a basis for planning.

The primary objective is that tariffs should be cost-oriented and that users should be expected to pay no more and no less than would be expected of an efficient operator. The responsibility to comply with these principles, and consequently the tariff rebalancing exercise, lies with Maltacom.

The MCA therefore, in concomitance with the publication of this document, is requesting Maltacom to submit proposals and a timetable for rebalancing which are consistent with cost-orientation and protecting the interest of users. The MCA will then consider the timing and scope for price reductions, possibly with the use of benchmarking depending on the extent to which these proposals are justified by costs.

4.4.8 Call Charging Schemes

The structure of call charging schemes is a commercial issue that can be used as a tool for competitive advantage. Accordingly call charging schemes will not be directly regulated by the revised from of control. However this is an issue that inevitably has a significant connection with any tariff rebalancing exercise.

The following table outlines the tariffs charged by Maltacom for local calls:

Time of Day		Local Calls
Monday – Friday:	*0800 – 1800 hrs*	1 pulse every five minutes or part thereof
Monday – Friday: Saturday – Sunday:	*0600 – 0800 hrs* *0600 – 1800 hrs*	1 pulse every ten minutes or part thereof
Monday – Sunday:	*1800 – 0600 hrs*	1 pulse every call irrespective of duration

Basic charges are as follows:

Residential customers: *The first 100 pulses every 2 months are free of charge,*
In excess of 100 pulses every 2 months at the rate of Lm0.05,25 (inclusive of VAT).
Monthly Rental Charge Lm2.10 (inclusive of VAT).

Business customers: *All pulses at the rate of Lm0.05,75 (inclusive of VAT).*
Monthly Rental Charge Lm4.98 (inclusive of VAT).

The following observations can be made from the above tables:

- Subscribers do not have the option to choose between alternative tariff plans;
- There is a minimum call charge of Lm0.05,25 irrespective of duration of the call[28];
- Calls are charged on a pulse basis with the highest rate being that of Lm0.05,25 every five minutes[28];

[28] In the case of residential customers only. For business customers the respective charge is Lm0.05,75.

- All calls between 1800hrs to 0600hrs are not charged according to duration;
- The credit for free pulses allowed to residential customers exceeds the equivalent monthly rental charge;
- The tariffs charged are discriminatory, with business customers being charged higher monthly rent, higher usage charges, and not being allowed any credit for free pulses.

The reality that charging schemes are a commercial issue should not negate the fact that such schemes should be consistent with the principles of cost-orientation and protecting the interest of users. At the same time certain features have very positive characteristics, such as encouraging residential dial-up Internet access, and affordability of service by low-volume customers. Offering subscribers the possibility to choose between alternative tariff schemes might allow subscribers to continue benefiting from such advantages. The incumbent operator would need to address these issues as part of its tariff rebalancing process.

4.4.9 Application of New Control

The Rate Mechanism of 1998 came into force on 1st January 2000 and, unless renewed, was to remain in force for a period of six years. The new control would supersede the Rate Mechanism of 1998. While it would be complex and create confusion to immediately introduce a new control on the fixed operator's prices, the new control should ideally be in place by 1 January 2003. The start date would dovetail with the full liberalisation of telecommunications in Malta and with the tariff rebalancing process.

If the new control takes the form of a price cap formula, it is envisaged that the initial duration of the price cap will be for a period of three years after which it would be subject to review. The compliance period would run on a calendar year basis and this would coincide with the operator's financial year. Application of the new price cap might involve the determination of a Price Cap Index ("PCI") on the basis of the price cap formula, and an Actual Price Index ("API") on the basis of the actual average charges and relative weights of the controlled services. The PCI would then represent a ceiling for the API in any relevant period.

4.5 Conclusion

The MCA proposes to introduce appropriate regulatory controls which will see the market through its transition from a monopoly to a competitive scenario. It therefore invites interested parties to forward their views, particularly on the form, scope and level of controls proposed in this paper. It is also invites Maltacom plc to submit proposals and a timetable which lays out how it intends to rebalance its tariffs. The MCA may also request Maltacom to provide it with information on its revenues, average charges and other relevant data.

Q-ii: **Do you agree that the Rate Mechanism of 1998 should be replaced by a new control that is better suited to manage the transition to a liberalised fixed telecommunications market? If not, please state your reasons.**

Q-iii: **Do you agree that a price cap formula is the most appropriate form of control for such services? If not, please state your reasons and state which other forms of control may be more appropriate.**

Q-iv: **Do you consider that a price control system or formula based on a case-by-case submission to the MCA would be preferable to a general price cap formula? If so please explain and detail how the efficiency driver X could be replaced in such a system?**

Q-v: **Do you agree that the revised mechanism should separately address a broad basket of services, individual services and low-volume bills?**

Q-vi: **Do you agree with the composition of the broad basket of services being proposed?**

Q-vii: **To what extent should increases in the low-volume bill be controlled?**

Q-viii: **Do you agree that an operator should be allowed to carry-over any over-achievement in one year against its targets for future years? If so, should a carry-over be automatic or be at the discretion of the MCA?**

Q-ix: **What detailed time frames do you think would be most appropriate for tariff rebalancing? Do you agree that the new control should commence on 1 January 2003 for an initial period of three years?**

Q-x: **Which features of the current call charging scheme do you believe may require modification as part of the tariff rebalancing exercise?**

5 Mobile Telecommunications Services

5.1 Introduction

Vodafone Malta Ltd initially had a licence to provide TACS, ETACS and GSM services on an exclusive basis until 10th December 2009. Following the approval by Parliament of certain amendments to the Telecommunications (Regulation) Act and of the NPRTS, a new licensing regime came into force. Under the new licensing regime Vodafone lost its exclusive right to provide mobile services.

The second mobile network operator, Mobisle Communications Ltd, launched operations in December 2000 branding its service "Go Mobile". The company is a fully owned subsidiary of Maltacom plc. Under the NPRTS no additional mobile licences will be issued before 31st December 2002. The MCA will consider the granting of a third mobile licence in 2003.

5.2 Competition in the Market

The emergence of a new player in the mobile telephony services market immediately increased competitive pressure on retail prices.

As in the case of fixed telephony, an effective competition review requires a detailed study based on several indicators. Overseas national regulatory authorities have attempted to draw a comprehensive list of indicators, for instance the indicators adopted by Oftel in the UK are illustrated in Appendix II. Such a study may form the basis of future price control reviews as the market develops and becomes more complex. Although such a study has not yet been undertaken, the effect of competition in the mobile telephony market has already left its mark with substantial reductions in retail tariffs, improved service choice and quality, and an impressive upward trajectory of mobile usage patterns.

These recent developments indicate that competition in the market for mobile telephony services is more pronounced than that for other telecommunications services in Malta. This can be attributed to a number of characteristics such as reduced barriers to consumer switching, the choice of tariff schemes and billing transparency.

There are few practical barriers to customer switching (although the absence of number portability may discourage many customers). In the case of prepaid tariff plans the connection fee is low or bundled with the initial purchase of call credit. Similarly no disconnection fee is payable to the operators on expiry of the service. Subscription packs are readily available from a very high proportion of retail outlets in Malta.

Consumers, in addition, have the option to select between a number of post-paid and prepaid tariff plans. The choice available allows users to decide which tariff plan is the most advantageous for them, based on their usage patterns and other factors.

Consumers also have a high degree of billing transparency available to them. All contract and tariff plans are billed on a per second basis and there are currently no minimum or call set-up charges. Prepaid users can instantly verify their available call credit while contract customers have the benefit or receiving itemised call billing free of charge.

5.3 Scope and Form of Control

Given the emerging level of competition in the mobile telecommunications services market, the MCA does not believe that it is necessary to introduce price cap formulae in respect of retail tariffs charged for services in this market. However, with only two operators, the market for such services is still not subject to effective competition. As a result the MCA believes that until such time as the market is subject to effective competition, some sort of regulatory control over the retail tariffs charged for these services is required.

5.3.1 The Current Control

Mobile operators are required to obtain the MCA's prior approval for any changes in retail tariffs or other terms and conditions relating to their tariff plans (and full prior approval in the case of new services and tariff plans). The MCA had adopted a policy of approving tariff proposals within a short time, provided that the operators observed the following guidelines:

- Tariff changes consist of tariff reductions;
- Tariffs are considered by the MCA to be clearly comparable to benchmark tariffs in EU markets or are supported by evidence of similar tariffs in at least three EU member states;
- Tariffs do not appear to the MCA to be manifestly predatory or discriminatory;

The above guidelines are consistent with the provisions of the law outlined in Section 2. The MCA has taken the view that in order to be consistent with these guidelines, retail tariffs should not be allowed at present to go below the current interconnection rate (Lm0.08,5 for mobile termination and Lm0.02,25 for fixed termination, both exclusive of VAT) and mobile operators should not, for the time being, be allowed to charge retail tariffs which discriminate between calls terminating on their own network and calls terminating on another mobile operator's network.

On a number of occasions the MCA has been presented with tariff plans which introduced innovative features intended to make them more attractive. Such features include, amongst others:

- customer rewards on the basis of incoming and/or outgoing calls;
- temporary special offers including:
  - waiving of connection fees,
  - reduction on call charges,
  - discounts on top-up vouchers.
- Preferential rates for calls made to closed user groups.

The MCA's present policy is to approve such offers subject to the condition that they are consistent with the adopted guidelines described earlier. Where the MCA is of the opinion that such offers do not conform strictly to these guidelines, it further considers the scale of the conflict and the extent to which the divergence impinges negatively on competition.

The operators' submissions are kept confidential by the MCA until the date on which the tariffs come into effect or until the operator announces the tariffs. To date the MCA has not exercised the right, allowed to it by law, to offer the opportunity for comment upon proposed changes by other operators and by customers.

Due to the growing number of requests for approval which the MCA was receiving, more recently it instructed the operators to submit their tariff plans in a standard format which illustrates all the terms and conditions in a comprehensive manner and to indicate the old tariffs alongside the new proposed tariffs in order to facilitate comparability (Appendix I).

5.4 Conclusion

The MCA proposes to maintain the current regulatory controls and believes that they are still appropriate for the regulation of the market. It also invites interested parties to forward their views, particularly on how the mobile telephony market may benefit from the maintenance of the current control or from the introduction of alternative methods of price control.

Q-xi: **Do you agree that the current degree of competitiveness in the mobile telecommunications services market warrants a form of price control?**

Q-xii: **Do you agree that the form of control in force (prior approval) is the most appropriate form of control for such services? If not, please state your reasons and state which other forms of control may be more appropriate.**

Q-xiii: **Do you agree with the guidelines being followed for the purposes of approving tariffs? Are any of the current guidelines inappropriate? What other factors should be considered?**

Q-xiv: **Do you agree that operators' tariff proposals should be kept confidential? Under which circumstances would you believe it appropriate to offer the opportunity for comment by operators and by customers?**

6 Cable Services

6.1 Introduction

The market for the provision of cable services in Malta started in 1991 when Melita Cable was awarded an exclusive licence to provide these services for a period of 15 years. Following the approval by Parliament of certain amendments to the Telecommunications (Regulation) Act and of the NPRTS, a new licensing regime came into force. Under the new licensing regime the cable services market was liberalised on 1st June 2001.

6.2 Competition in the Market

Although Melita Cable's exclusive privilege to provide cable services ended on 1st June 2001 there are currently no other operators providing these services in Malta and the market is still a monopoly. Melita Cable has nearly national coverage through its network while penetration of the service stands at approximately 70% of households. This gives Melita Cable a considerable advantage over any prospective competitor.

Nevertheless, alternative technologies allowing the provision of the same services that Melita provides already exist. Maltacom has already announced that it is considering the possibility of providing Video on Demand services over its existing network. Furthermore cable services need not be provided over fixed lines but may also be provided over wireless technology. At the same time satellite television represents a substitute for cable television to many Maltese consumers. As a result the threat of new entrants and competitive pressure is not absent from this market. As in the case of fixed and mobile telephony, an effective competition review requires a detailed study based on several indicators. Overseas national regulatory authorities have attempted to draw up a comprehensive list of indicators, for instance the indicators adopted by Oftel in the UK are illustrated in Appendix II. Such a study may form the basis of future price control reviews as the market develops and becomes more complex.

6.3 Scope and Form of Control

Under the old licensing regime, tariffs were regulated by the licence agreement signed between the Government of Malta and Melita Cable. The agreement only regulated the rates for the Reception and Basic tiers, including connection fees, disconnection fees and converter deposits. Rates for Premium Services, Pay per View Services and Leased Channel Services were not to be regulated.

Requests for changes in the regulated rates had to be accompanied by analysis of costs. Melita Cable had the right to seek arbitration if the Government rejected a proposed increase in rates. The decision of the arbitration was binding. Following the introduction of the new licensing regime, all tariff rates are now regulated by the Cable Systems (General) Regulations as summarised earlier in Section 2.3.

6.3.1 The Current Control

Melita Cable is required to obtain the MCA's prior approval for any changes in retail tariffs or other terms and conditions relating to its tariff plans (and full prior approval in the case of new services and tariff plans). Although the Cable Systems (General) Regulations provide for the implementation of price cap regulation, such a control mechanism has never been set up.

6.3.2 The Proposed Control

The MCA believes that the current regulatory controls over tariffs are still appropriate for the regulation of the market. Obligations arising under the Cable Systems (General) Regulations include that an operator with a DMP is required to use unbundled and cost-oriented tariffs, which are transparent and non-discriminatory. As stated in the introduction to this paper, the implementation of cost-based accounting systems and the preparation of separated accounts will provide better information for this purpose.

6.4 Conclusion

The MCA is inviting interested parties to forward their views on the matters discussed above, particularly on how the cable services market may benefit from the maintenance of the current control or from the introduction of alternative methods of price control.

Q-xv: Do you agree that the current degree of competitiveness in cable services warrants a form of price control?

Q-xvi: Do you agree that the form of control in force (prior approval) is the most appropriate form of control for such services? If not, please state your reasons and state which other forms of control may be more appropriate.

7 Consultation framework

7.1 Consultation Period

The consultation period will run until noon on Friday July 19, 2002. Comments should be sent to:

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“Il-Piazzetta” Suite 43/44
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Sliema SLM 16
MALTA

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Fax: +356 21 336 846
E-mail: jcuschieri@mca.org.mt

Written comments may be made publicly available at the MCA unless confidential. Respondents are therefore asked to separate out any confidential material into a clearly marked annex. Respondents are also kindly requested to refer their comments to the specific sections of this document.

7.2 Finalisation of the MCA’s Position

The MCA will consider comments received in response to this consultative document before publishing final guidelines or establishing rate mechanisms. It may also offer the proposed forms of price regulation to further consultation as considered appropriate.

7.3 Conclusion

In conclusion, this consultation paper on tariff control policy is proposed by the MCA for comment by interested parties. The MCA recognises that tariff policy control to be a very important one for the regulation of the telecommunications market, both now and in the future. This methodology has been prepared with a view to being comprehensive, clear and accurate with the flexibility to be amended having regard to the changing structure and nature of the telecommunications market in Malta and globally.

Appendix I

Proposal for Retail Tariff Prices – Mobile Telephony

Proposal for Retail Tariff Prices
Mobile telephony

Company			
Contact person:			
Plan name:			
Plan Ref:		Date Submitted:	

VOICE	**Proposed**	**Previous revisions**		
Effective date				
Connection fee				
Monthly access fee				
Free minutes				
Peak				
Off-Peak				
Any time				
First rate				
Number of Minutes				
Peak				
Off-Peak				
Both				
Rate per Minute				
Peak				
Off-Peak				
Both				
Second rate				
Number of Minutes				
Peak				
Off-Peak				
Both				
Rate per Minute				
Peak				
Off-Peak				
Both				
Definition of time bands				
Peak				
Off-Peak				
Other				

Guidance for completing this form:
Connection fee should include amounts charged to customers on initial connection to the network on the purchase of a subscription. **Monthly access fee** refers to fixed rental and similar network access charges which are levied at fixed intervals. **Free Minutes** should include the number of minutes for which no charge is debited or which are bundled in the monthly access fee. **First rate** charges refer to the first tier of minutes charged after the free minutes are consumed. **Second rate** charges refer to the second tier of minutes after free and first rate minutes have been consumed. **Definition of time bands** should specify the start and end times where a higher/lower rate becomes effective.

mca
Malta Communications Authority

Proposal for Retail Tariff Prices
Mobile telephony

	Proposed	Previous revisions		
Other services				
1 SMS				
2 Data				
3 Fax				
4				
5				
Time window				
Window 1				
Top-up				
Duration				
Window 2				
Top-up				
Duration				
Window 3				
Top-up				
Duration				
Discount rates				
Rate 1: …………………………				
Rate 2: …………………………				
Rate 3: …………………………				
Rate 4: …………………………				
Rate 5: …………………………				
Client Services				
Directory Services				
Customer Care				
Itemised Billing				
…………………...………				
…………………...………				

Attachments

1	
2	
3	
4	

Guidance for completing this form:
Other services Please provide details and charges relating to other services not specified elsewhere. **SMS** charges should be separately indicated in the space provided. **Time window** refers to origination/termination rights attached to prepaid top-ups. **Discount rates** should include discount/refund/recharge schemes available to clients of this tariff. Please append **attachments** as required for any information which can not be submitted on this form.

Form MCA/05/2

Appendix II

Effective Competition Indicators[29]

[29] Extracts from "Effective Competition Review Guidelines" published by the UK Office of Telecommunications (OFTEL), August 2000.

The indicators are a mix of quantitative data, for example on market structure and profitability, and qualitative data, for example on customer awareness of alternative operators.

Indicator	Criteria
Consumer outcome	Consumers shown to enjoy 'best or near best deal' in comparison with consumers in similar economies* A wide range of services available to consumers Consumers satisfied with the quality of service they receive. Sets of prices which broadly reflect underlying costs (i.e. absence of persistent excessive profits);
Consumer behaviour	Consumers able to access information to help make effective choices; Consumers confident/ knowledgeable in using information and in taking advantage of market opportunities; Absence of barriers to consumers switching suppliers.
Supplier behaviour	Active competition in price and quality and innovation; Absence of anti-competitive behaviour; Absence of collusion; ** Meeting consumer needs; *** Efficient provision of services; Recent entry.
Structural	Limited entry barriers which would make the threat of entry is a competitive discipline; Absence of inefficient suppliers; Limited ability of operators with market power in related markets (through vertical or horizontal integration) to lever this market power into the market segment being reviewed.**** Changes in market structure over time, especially a tendency to reduce concentration.

* International benchmarking may be used to compare prices between countries based on basket methodologies. However it is more difficult to compare other aspects of consumer outcomes (e.g. in terms of availability of services, quality of service or customer satisfaction) on a like-for-the basis between countries.

** Absence of collusion: this may be difficult to identify e.g. a lack of direct evidence of collusion may be due to it being well hidden rather than its absence. Measures in this area need to focus on indicators of outcomes consistent with collusive behaviour and whether there is any previous history of collusion.

*** Meeting consumer needs: this could, for example, be measured through surveys of consumers' views and the speed with which innovative products are brought to the market.

**** Market power in related markets: operators in the market segment under review may have been determined to have market power in a related market. The possibility of the operator leveraging this market power into the market segment under review will, if appropriate, be considered as part of the review.