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Malta Communications Authority
(MCA)

Valletta Waterfront — Pinto Wharf
FRN 1913 Valletta
Malta

For the attention of:
Mr Philip Micallef
Executive Chairman

Fax: +356 21 336 846

Dear Mr Micallef,

Subject: Commission decision concerning Case MT/2011/1259: Transit services in the fixed public telephone network

Article 7(3) of Directive 2002/21/EC:¹ No comments

I. PROCEDURE

On 12 October 2011, the Commission registered a notification from the national regulatory authority of Malta (the MCA) concerning the wholesale market for transit services in the fixed public telephone network in Malta.

The national consultation² ran from 18 July 2011 until 31 August 2011.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

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

² In accordance with Article 6 of the Framework Directive.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The market for transit services in the fixed public telephone network was first notified to and assessed by the Commission under Case MT/2006/0389.³ The MCA proposed to define distinct markets for national and international transit services.

As regards national transit services, the MCA proposed to exclude this market from *ex ante* regulation given its failure to meet the three criteria test.

As regards international transit services, the MCA concluded that the market fulfilled the three criteria test, designated Maltacom plc (Maltacom)⁴ as having significant market power (SMP), and imposed a full set of remedies on it.

The Commission had no comments.

II.2. Market definition

As in the previous analysis, the MCA considers international transit services and national transit services as functionally different and not substitutable given national circumstances.

On the basis of the above, the MCA identifies two wholesale transit markets in Malta:

- (1) wholesale national transit services in the fixed public telephone network; and
- (2) wholesale international transit services in the fixed public telephone network.

The MCA defines the relevant market as national in scope.

II.3. The three criteria test

As the wholesale market for transit services in the fixed public telephone network has been removed from the list of relevant markets annexed to Commission Recommendation 2007/879/EC,⁵ the MCA carries out the three criteria test⁶ with regard to both segments of the notified market.

National transit services

The MCA proposes to continue excluding this market from *ex ante* regulation given its failure to meet the three criteria test. The MCA finds that (i) there are no high barriers to market entry given the direct interconnection of all fixed operators and the fact that wireless

³ SG-Greffe (2006) D/202899.

⁴ Maltacom has since been renamed GO plc (GO).

⁵ Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (the Recommendation), OJ L 344, 28.12.2007, p. 65.

⁶ In accordance with Point 2 in conjunction with Recital 5 of the Recommendation, when identifying markets other than those mentioned in the Annex, national regulatory authorities should ensure that the following three criteria are cumulatively met: (1) there must be high and non-transitory entry barriers, (2) the structure of the market must not tend towards effective competition within the relevant time horizon and (3) the application of competition law alone would not adequately address the market failure(s) concerned.

technologies can provide a comprehensive substitute for transit services offered by existing suppliers;⁷ (ii) market developments show effective competition as Melita and Vodafone gained market shares⁸ at the expense of GO, and spare capacity is readily available, while the demand for national transit services is falling; (iii) finally, the MCA considers that competition law by itself is adequate to address any potential market failure in the absence of *ex ante* regulation.

International transit services

The MCA proposes to exclude also this market from *ex ante* regulation given its failure to meet the three criteria test. In contrast with the previous market review, the MCA considers that (i) there are no high barriers to market entry, as in the last few years GO and Melita have completed installing their own submarine cables, with the capacity of international transit services doubling in less than three years, bringing the number of undersea fibre optic connections with Sicily to four.⁹ The MCA notes that switching between the three international transit providers can materialise sufficiently quickly and at no significant cost. Moreover, Vodafone and Melita have launched their own wholesale offer without regulatory intervention¹⁰ and are competing directly with the incumbent and among themselves. This results in market share developments in favour of the new entrants,¹¹ suggesting that none of the three suppliers enjoys any significant advantage over competitors, a trend which is expected to be sustained in the years ahead. Unlike self-supplied traffic volumes, transit traffic volumes have been increasing since 2009, which suggests that the alternative operators gained market shares at the expense of GO, and not thanks to self-supply. The MCA considers that third-party traffic will continue to increase more significantly than self-supply, and as existing operators have sufficient spare capacity, they will be able to meet new demand. Hence, the MCA considers that (ii) the market is competitive and will remain so within the timeframe of this review. The MCA notes that (iii) competition law by itself is adequate to address any potential market failure in the absence of *ex ante* regulation.

II.4. Finding of significant market power and regulatory remedies

The MCA concludes that no operator enjoys SMP in either of the above markets and proposes to withdraw the existing regulatory obligations 30 days following the adoption of the final measure.

III. NO COMMENTS

On the basis of the present notification, the Commission has no comments.¹²

⁷ SKY Telecom and Vodafone are considered capable of providing transit services over their broadband wireless networks.

⁸ The market shares in Q1 2009: GO 50.21%, Vodafone 33.46% and Melita 16.33%. The market shares in Q1 2011: GO 40.12%, Vodafone 36.62% and Melita 23.26%.

⁹ In 2009 Melita deployed an undersea cable (St Paul's Bay-Pozzalo) and GO deployed its second undersea cable (St Paul's Bay-Mazara del Valo) in order to increase the capacity and ensure resilience of the networks, given that GO's first cable is reaching the end of its life.

¹⁰ Moreover, the MCA received no formal complaints.

¹¹ The market shares in Q1 2009: GO 62.94%, Vodafone 24.36% and Melita 12.71%. The market shares in Q1 2011: GO 58.92%, Vodafone 27.30% and Melita 13.78%.

¹² In accordance with Article 7(3) of the Framework Directive.

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

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

Pursuant to Point 15 of Recommendation 2008/850/EC¹³ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹⁴ within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹⁵ You should give reasons for any such request.

Yours sincerely,
For the Commission,
Robert Madelin
Director-General

¹³ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹⁴ Your request should be sent either by email: INFSO-COMP-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

¹⁵ The Commission may inform the public of the result of its assessment before the end of this three-day period.