mca
MALTA COMMUNICATIONS AUTHORITY

Wholesale voice call termination on individual mobile networks

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

Response to Consultation and Final Decision

6th October 2008

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Executive Summary

The MCA is hereby presenting its decision on the market for wholesale mobile voice call termination, in accordance with the EU regulatory framework of electronic communications networks and services. This document builds on a consultation exercise carried out by the MCA earlier this year. The consultation period ran from the 18th of March 2008 till the 15th of April 2008.

The MCA received three responses from:

- Vodafone (Malta) Ltd.;
- Mobisle Communications Ltd. (Go Mobile); and from
- Melita Cable plc.

The MCA has taken full account of comments submitted during consultation. The views of respondents and the corresponding views of the MCA are found at the end of each chapter.

The MCA also consulted the Office for Fair Competition on the findings of this market review. From its investigations, the OFC agreed with the findings of the MCA and its official position will be made available to the general public[1].

Following a thorough consideration of all submissions, and pursuant to Article 7(5) of the Framework Directive, the MCA has communicated its decision to the EU Commission and other NRAs.

Background

The EU Commission refers to wholesale voice call termination on individual mobile networks as a candidate market susceptible for ex ante regulation. Wholesale mobile voice call termination (MCT) is a necessary service for a network operator to terminate calls on other or across networks. These services are indeed necessary for mobile network operators (MNOs) to connect a caller with the intended mobile recipient of a call on a different network.

In the first round market review for mobile termination the MCA concluded that there was no good substitute for termination services on mobile networks. The MCA's decision in 2005 specified that the relevant product market consisted of mobile call termination as supplied by a particular MNO, and that each MNO enjoyed monopoly power in this market. Two separate markets for mobile termination were identified:

- Wholesale voice call termination provided by Vodafone Malta Ltd.
- Wholesale voice call termination provided by MobIsle Communications Ltd.

The MCA designated both Vodafone and Go Mobile with SMP on the wholesale markets for the termination of voice calls on their individual networks.

The mechanism for regulating mobile termination rates (MTRs) took the form of a glide path. Eventually, the market experienced a gradual decline in MTRs as from 2005

[1] OFC reply is found in Appendix to this document.

through to 2008. The price control obligation for MTRs was mandated in conjunction with other regulatory obligations on access, non-discrimination, transparency, and accounting separation.

Second Round Market Review

Identification of Markets

In relation to wholesale voice call termination on individual mobile networks the MCA has in this review identified two relevant markets in accordance with competition law principles. These are:

- Wholesale voice call termination provided by Vodafone Malta Ltd.; and
- Wholesale voice call termination provided by MobIsle Communications Ltd.

The relevant geographic markets for the provision of mobile voice call termination services by both Vodafone (Malta) Ltd. and Mobisle Communications Ltd. is national in scope.

Further details on the MCA's market definition exercise, response to consultation, and decision, are found in Chapter 2 to this document.

Assessment of Significant Market Power (SMP)

After having conducted an analysis of the relevant markets, the MCA designated both Mobisle Communications Ltd. and Vodafone (Malta) Ltd. as operators having SMP in the market for wholesale voice call termination on their own network. More specifically the MCA identified:

- Vodafone (Malta) Ltd. as having SMP in the market for 'Wholesale voice call termination provided by Vodafone Malta Ltd.'; and
- Mobisle Communications Ltd. as having SMP in the market for 'Wholesale voice call termination provided by MobIsle Communications Ltd.

In light of market evidence, the MCA took into account a selected number of criteria to justify its designations, namely:

- market shares;
- entry deterrence;
- countervailing buyer power; and
- pricing structure.

Full details of the MCA's assessment of SMP, response to consultation, and decision, are contained in Chapter 3 to this document.

Regulatory Implications

Given the position of dominance held by all operators providing wholesale mobile voice call termination on their respective networks, and the potential competition problems identified, the MCA deems it necessary to impose obligations on both Vodafone and Go Mobile as listed below:

a. Access to/and use of specific facilities;

b. Non-discrimination;

c. Transparency;

d. Accounting separation; and

e. Price control and cost accounting.

The MCA notes that the mandated regulatory obligations are based on the nature of the competition problems it has identified in the relevant market, and that each obligation is proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

Full details of the MCA's regulatory decisions, are contained in Chapter 4 to this document.

Chapter 01 – Introduction

1.1 The EU Regulatory Framework for Electronic Communications

The EU Regulatory Framework for Electronic Communications (also referred to as the eCommunications framework[2]) sets the ground rules for regulation and aims to ensure legislative stability and harmonisation of the regulatory approach across EU Member States.

The eCommunications Framework comprises of five directives as follows:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ("the Framework Directive");
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive");
- Directive 2002/20/EC on the authorisation of electronic communications networks and services ("the Authorisation Directive");
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services ("the Universal Service Directive"); and
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector ("the Privacy Directive").

The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives reading across all the new directives. Article 8 of the Framework Directive sets out three key policy objectives 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.

The above-mentioned directives were transposed into national legislation when the Maltese Parliament enacted 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 establishing users' rights with regard to the privacy of their communications was transposed on 10th January 2003 (Legal Notice 16 of 2003 under the Data Protection Act).

[2] Transposed into Maltese legislation on 14th September 2004.

The Directives oblige National Regulatory Authorities (NRAs) such as the MCA to carry out reviews of competition in electronic communications markets to ensure appropriate and proportionate regulation in the light of ongoing changes in market conditions.

Each market review is subdivided into three phases:

- The definition of the relevant market or markets;
- An assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in the relevant market; and
- An assessment of remedies to be imposed on undertakings identified as having 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, and the ECNSR together with other documents issued by the European Commission and the MCA.

1.2 Market Review Methodology

The EU Recommendation on relevant product and service markets within the electronic communications sector provides a common approach for NRAs in the identification of telecoms markets for which regulatory intervention is warranted. The Recommendation originally came into force in July 2003 (Rec. 2003/311/EC). After being in force for more than four years, the Recommendation has been up for review and eventually revised. The revised Recommendation was then published in November 2007.

This process brought about some very important developments. Of significant relevance was the proposal to reduce to 7[3] from 18 the number of markets for which the EU Commission recommends regulatory intervention.

Beyond these markets regulators could still intervene. However, NRAs need to present their case with the EU Commission to justify their intervention in markets that have been excluded from the Recommendation.

At the same time, the principles behind the framework and the ground rules for how telecommunications are regulated across the EU have not changed. The revised Recommendation remains set to promote further harmonisation across the European Community by ensuring that the same product and service markets are subject to a market analysis in all Member States.

From a local view point, the MCA's document entitled 'Market Review Methodology' elaborates on the criteria used in assessing competition in Maltese electronic communications markets[4]. In this respect, the Recommendation, the EU Commission guidelines on market analysis ("Market Analysis Guidelines"), and the guidelines on the assessment of SMP (the "SMP Guidelines") assume much relevance to the analysis of a product or service market under investigation (see Regulation 8 of the ECNSR).

Regulation 6 of the ECNSR stipulates that the results of market reviews carried out by the MCA shall be notified to the European Commission and to other NRAs. If the Commission is of the opinion that the market definition or proposals of whether to designate or not an

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[3] The revised Recommendation refers to voice call termination on individual mobile networks as Market 7.

[4] Link to MCA market review methodology: http://www.mca.org.mt/infocentre/openarticle.asp?id=513&pref=1

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 any proposed measure(s) for a further period of 2 months while the Commission considers its position.

Market reviews are also supported by market data, which is collected from various internal and external sources, including users and providers of electronic communications networks and services, and from regular consumer surveys.

1.3 Scope and structure of this review

This review considers the markets for wholesale mobile voice call termination in Malta. The rest of the document is structured as follows:

Chapter 2 first outlines the competitive constraints on the price-setting behaviour of operators providing wholesale mobile voice call termination. Demand side substitution, supply side substitution, and potential competition are considered.

It then presents the MCA's reactions and decision on the market definition exercise after having set out the views of respondents expressed in their submissions to consultation.

Chapter 3 presents an analysis of dominance in the market, considering a number of criteria for the assessment of SMP, namely market shares, barriers to entry and potential competition, countervailing buyer power, and pricing structure..

This chapter also sets out the views of respondents as expressed in their submissions to consultation with respect to the market analysis exercise and outlines the MCA's reactions to these submissions.

Chapter 4 outlines the nature of the potential competition problems identified, given that both Vodafone and Go Mobile had been designated as having SMP.

This chapter also sets forth the regulatory obligations mandated by the MCA, following a detailed description of all views expressed by respondents in their submissions to consultation with respect to regulatory matters.

Chapter 02 - Market Definition

2.0 Outline

This chapter defines the markets for wholesale voice call termination on individual mobile networks in Malta, delineating market boundaries on the basis of a product dimension and a geographic dimension. It starts by investigating the conditions in which MNOs operate through a detailed analysis of demand-side and supply-side substitution both at the retail and the wholesale level.

This chapter also sets out the views of respondents as expressed in their submissions to the market definition exercise, and outlines the corresponding MCA reactions.

2.1 Background to the Chapter

Regulation 10 of the ECNSR stipulates that prior to the assessment of SMP, an appropriate market definition is to be determined. This approach must tailor for national circumstances whilst taking utmost account of all applicable guidelines and the Recommendation issued by the European Commission.

There are various dimensions related to the market definition procedure. Paragraph 2.1 of the Commission's Recommendation on relevant markets states that *'As the market analysis carried out by the NRAs have to be forward-looking, markets are defined prospectively. Their definitions take account of expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review*'. In this regard, the MCA carries out its market analysis on a forward looking basis, and where it is thought possible that market conditions may change significantly during the timeframe of this review, these changes are identified and discussed.

Paragraph 4 of the same Recommendation adds that retail markets shall be examined in a way which is independent of the infrastructure being used, as well as in accordance with the principles of Competition Law. Again this approach is at the heart of the MCA's analysis. The MCA's approach is based on a Competition Law assessment of markets and an assessment of the extent to which switching among services by consumers constrains prices, irrespective of the infrastructure used by the providers of those services.

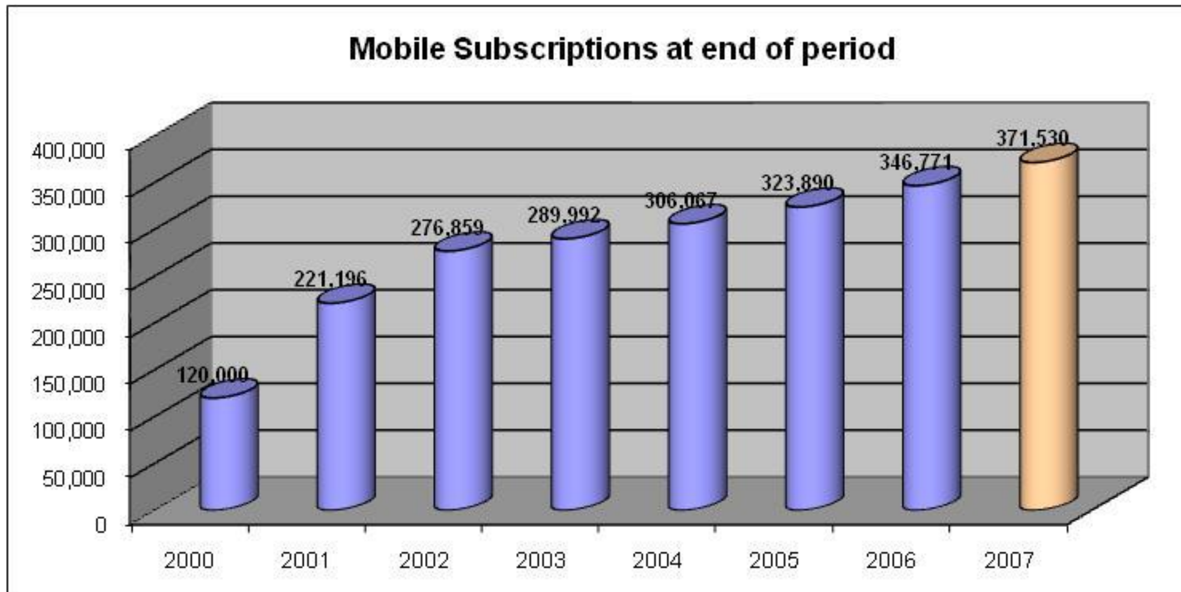
The market definition procedure identifies in a systematic way the competitive constraints that MNOs encounter, thereby also facilitating the subsequent market analysis procedure.

2.2 The Mobile Telephony Sector in Malta

For nearly two decades, the mobile telephony sector in Malta has been characterised by two competing operators, namely Vodafone Malta Ltd. and MobIsle Communications Ltd., operating under the brand name of Vodafone and Go Mobile respectively. Go Mobile launched their services in December 2000 whilst Vodafone started its operations way back in 1990.

In 2007, the third mobile licence has been awarded, this time to M/C Venture Partners, which subsequently announced that it was taking a stake in Melita Cable plc. This new market entity is expected to start rolling out its mobile services throughout 2008.

By the end of the fourth quarter of 2007, mobile penetration stood at around 91 per cent of the population[5], reaching 371,530 subscribers. Market shares were split at 52.6 per cent for Vodafone and 47.4 per cent for Go Mobile.



Throughout the years, new mobile telephony services have been rolled out, such as 3G mobile services, whilst a new trend in bundling has been observed.

These new services, together with other developments such as the introduction of number portability, have contributed to enhance competition in a market restricted by a small number of operators.

2.3 The Market Definition Procedure applied by the MCA

The MCA's forward-looking approach to market definition is set out according to the EU Commission's Recommendation and Guidelines. In accordance to Recital (7) of the Recommendation, this procedure starts from a characterisation of the retail market over a given time horizon, taking into account the possibilities for demand and supply-side substitution. Substitutability on the demand and supply sides is assessed by first 'looking' at the retail level followed by a similar exercise at a wholesale level.

2.4 Demand Side Substitution at the Retail Level

Demand-side substitution represents the most immediate and effective disciplinary force constraining the suppliers of a product or service. In theory, if suppliers increase the price of their goods and services customers could then choose to switch to alternatives, thereby constraining prices back to their 'original' levels.

The relevance of this argument for mobile call termination depends on the degree to which demand side substitution constrains MNOs in pricing this service. Indeed, pressure on MTRs could arise if customers of mobile telephony services value the price of incoming

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[5] According to the Central Bank of Malta Quarterly Review 2007:4, the number of Maltese and foreigners residing in Malta reached a total of 407810 persons in 2006.

calls so much that it determines their choice of network to make their off-net mobile-to-mobile calls.

This case is however not representative of normal customer behaviour, given that mobile call termination is governed by the 'Calling Party Pays' (CPP) principle. This principle underlines that the originator of the call (the calling party) pays for the whole cost of the call - including termination charges - whilst the recipient of the call incurs no charge for answering an incoming call. Therefore, MNOs have no incentive to maintain low MTRs given that subscribers are not price sensitive to these rates, and most probably not even aware of this cost component in retail tariffs for mobile calls.

An increase in the price of mobile termination could also determine the means of communication employed to reach mobile subscribers. Callers who are price sensitive to mobile termination charges could react to an increase in MTRs by switching to alternatives (substitutes) through which they could adequately terminate the calls on a mobile network to which the called party subscribes.

The following sub sections further evaluate demand side substitution at the retail level and its effects on wholesale mobile voice call termination both from a 'calling party' perspective and a 'called party' perspective.

2.4.1 Calling Party Behaviour – Price Awareness

In the latest qualitative survey[6] commissioned by the MCA, the majority of consumers say that they have enough information regarding the average prices of mobile voice calls being charged by their network provider. This means that if MNOs change their retail tariffs subscribers would notice such a change and act accordingly. This however does not suggest that consumers are aware of the underlying components of the price of a call, such as mobile termination charges. The end-user would only see a global retail tariff including the mobile termination rate and other costs. Consequently, the end-user cannot detect any changes in termination charges and cannot exert pressure on the setting of MTRs.

Under the CPP arrangement end users are insensitive to the pricing of termination on mobile networks. Number portability has made it more difficult for customers to identify the network to which the called party is subscribed and the termination charges that apply.

Overall, the MCA believes that the behaviour of the calling party cannot adequately influence the ability of MNOs to set high MTRs.

2.4.2. Calling Party Behaviour – The Use of Alternative Services

Assuming that consumers have enough knowledge of MTRs and are sensitive to changes in these rates, a small but non-transitory increase in MTRs could then motivate these consumers to switch to the use of alternatives.

In this regard, various demand side alternatives to voice call termination on mobile networks could be considered.

As a start, one could mention options such as the use of multiple internal SIM cards in the same handset or an automatic mechanism to re-route calls. However, such devices and mechanisms are not yet commonly available to the general public.

[6] Electronic Communications Market Review Sep–Mar 2007: http://www.mca.org.mt/infocentre/openarticle.asp?id=1093&pref=13

The following sections will assess other alternatives to determine whether these could have a significant impact on the setting of mobile termination charges and ultimately constrain MTRs.

A Calls to a Fixed Number

Calling parties can use fixed telephony as a possible alternative to mobile telephony. Indeed, presupposing that end users know on which network a call is terminated and the costs related to the call, calling parties can circumvent high MTRs when calling on a mobile phone by calling to a fixed number rather than to a mobile number. This is because calls to a fixed number usually involve cheaper (if any) termination charges.

However, this consideration ignores the fundamental principle that mobile numbers are intrinsically by nature 'mobile' and not set at fixed locations as a fixed line number. Therefore an end user calling someone on a mobile number might not have a 'real' choice to call that person on a fixed line number. This means that calls to a fixed number cannot be considered as a suitable alternative for calls to a mobile number.

B Mobile-to-mobile (MTM) Calls as a Substitute to Fixed-to-mobile (FTM) Calls

A calling party incurs the same termination charges for FTM calls and MTM calls. This is because a call terminated on a mobile network will use the same network elements (and therefore incur the same cost) regardless of the origination network being it fixed or mobile.

In this sense, in terms of termination rates, an end user calling a mobile number would be indifferent to whether the call is originated from a fixed or a mobile network. The MCA therefore believes that substitution from MTM to FTM calls does not impact wholesale MTRs.

C On-net MTM Calls as a Substitute to Off-net MTM calls and FTM Calls

According to the CPP principle, an end user is more concerned on the cost of making a call rather than on what others have to pay in order to terminate a call on the network to which the called party is subscribed. This means that if a mobile operator increases the charges for terminating calls on its network, an end user would have to face higher costs when making off-net mobile calls or calls through a fixed network.

In this regard, where an end user calling a mobile number is aware of the network terminating its call and the respective termination charges, an increase in these charges for off-net MTM calls and FTM calls would incentivise the said customer to choose on-net MTM calls by switching to the mobile network to which the called party is subscribed.

However, end users cannot exactly identify the network they are calling. In these circumstances, their call decisions and subscription preferences are not determined by costs for termination. Therefore, substitution from off-net MTM calls and FTM calls to on-net MTM calls is very unlikely, particularly when on-net and off-net mobile voice call termination charges are the same.

The MCA also notes that only a small share of customers have multiple mobile subscriptions, whilst the option of having to change SIM cards to make a call on different networks from the same mobile handset remains impractical. The more networks are in operation the more SIM cards would need to be changed every time a call has to be made to another network.

Finally, the MCA recognizes that local MNOs do not differentiate between on-net and off-net MTM voice call termination charges. In this sense, end users have no incentive to substitute on-net to off-net MTM calls on the basis of MTRs.

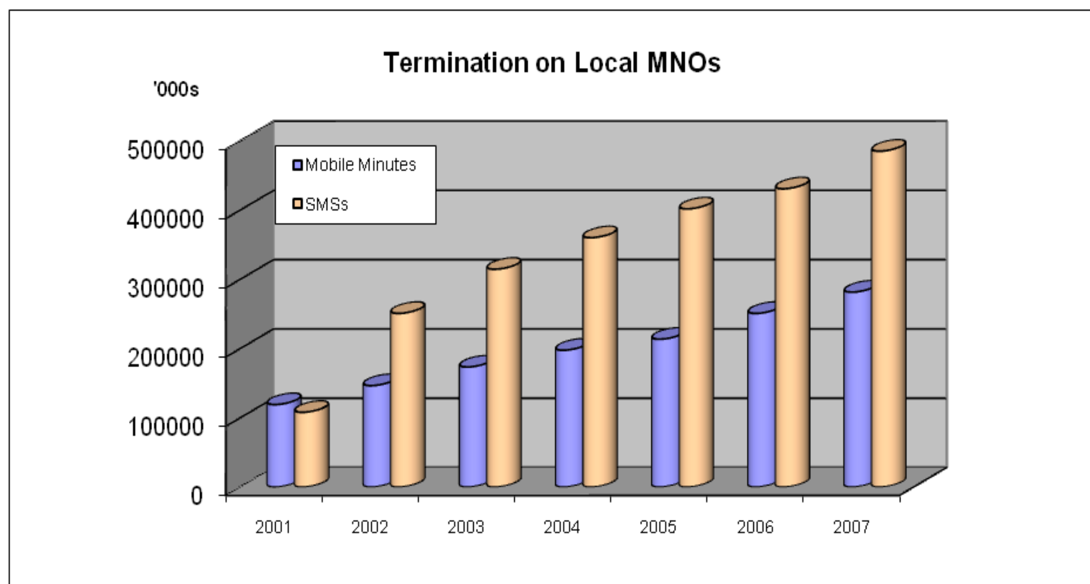
D SMS as Alternative to any Type of Call

Consumers may in some instances consider an SMS as a substitute for mobile voice calls, especially for shorter calls not requiring real time delivery. In fact, the latest mobile perception survey carried out on behalf of the MCA indicates that over 30 per cent of respondents *always* consider SMS to be a good substitute for mobile voice calls. Another 29 per cent *very often* consider SMS to be a good substitute.

At the same time, when asked to rate the price of mobile voice calls, over 60 per cent of respondents replied that it is still *expensive*. This means that with respect to the price differential between mobile voice calls and SMS, SMS is usually perceived to be a good and cheaper alternative as well.

Nonetheless, the MCA holds the view that SMS is not an adequate substitute to mobile voice calls for a number of reasons, namely:

1. the conveyance of a limited number of characters per message (160 alphanumeric characters); and
2. the transfer of SMS between networks on a 'store and forward basis' explaining the transfer delays in SMS.



Further to the above, the MCA observes that over the last few years both SMS usage and mobile voice call traffic (minutes) increased. No trend was in fact identified in favour of SMSs at the expense of call minutes terminated on mobile networks, even when retail SMS rates declined. Instead, both mobile minutes and SMS usage registered growth suggesting that, in general, end-users do not substitute voice calls with SMSs.

The MCA therefore reiterates that SMSs and voice calls qualify as complementary services rather than substitutes and that SMS usage is not an adequate instrument to constrain MTRs in the absence of regulation.

E Call-back Solutions

The MCA holds the view that, in general, call-back services cannot sufficiently constrain MTRs. This is further compounded by the fact that retail voice call charges are very similar or identical when calling on-net or off-net.

Furthermore, the MCA believes that, in the absence of regulation, the level of price sensitivity on the part of the calling party is insufficient to impact MTRs.

F Voice Over Internet Protocol Calls (VOIP)

The provision of VOIP calls could, in theory, represent an alternative way to conventional voice call methods of reaching a mobile subscriber. However, by simply switching from conventional voice calls to VOIP calls, end users do not automatically constrain MNOs behaviour with respect to the setting of MTRs. It is indeed the charging arrangement for VOIP calls that carries most weight in determining whether competitive pressures on termination charges set in.

As a matter of fact, it is possible for commercial operators to offer VOIP calls on the basis of different charging arrangements. For example, some VOIP providers may choose not to charge for calls to other subscribers to the service. Others may opt to charge for a long distance call to a number outside a particular calling area, similar to existing, traditional wire line telephone service. Other providers may even allow a caller to call anywhere at a flat rate for a fixed number of minutes or require the called parties to pay for VOIP calls.

It therefore remains inconclusive for the MCA to determine in what specific manner pricing arrangements for VOIP calls could influence MTRs charged by local MNOs.

2.4.3 Called Party Behaviour

The MCA notes that, given the CPP arrangement, the called party is relatively insensitive to the pricing and costs of termination on mobile networks. In reality, customers care most about the prices they have to pay to subscribe and to place calls with a mobile operator rather than what others had to pay in order to contact them. In this sense, the behaviour of the called party is not expected to limit a provider's ability to charge others high prices for its services, such as for mobile termination services.

If, on the other hand, a called party cares about what others have to pay to contact him/her, a small but significant non-transitory increase in mobile termination charges could induce the called party to arrange and have calls terminated via other forms of communication and/or another mobile network. A case in point is the existence of closed user groups referred to below.

A Closed User Groups

Closed user groups are specifically tailored to keep traffic within the community of family and friends or a business network. Such schemes are targeted to maintain voice calls on a particular network by offering cheaper call rates than the normal rates to numbers pertaining to a group of people.

In Malta, network wide Closed User Groups tariff schemes have been commercially launched. Nonetheless, the MCA does not have sufficient evidence to confirm that mobile users are selecting their service providers based on Closed User Group tariff structures. The MCA also notes that closed user groups are not widespread enough to put sufficient downward pressure on call termination charges.

B GSM Gateways

GSM gateways have been successfully deployed on the local market to cater for specific customer segments. This facility allows MNOs to limit churn and enables much call traffic originated through a traditional fixed line to a mobile number to be converted to 'on-net' mobile-to-mobile calls. This is achieved by programming a PABX to automatically route

calls dialled to mobile numbers to the GSM gateway which then sets-up an 'on-net' MTM call to complete the call. However, this solution can only be implemented in fixed locations and is generally deployed by business customers rather than individual users. Therefore, the MCA is of the view that this option does not have a sufficient constraining effect on mobile voice call termination charges.

End-users could possibly constrain MTRs if they are able to receive their incoming calls on networks other than the one to which they are subscribed by using and switching different SIM cards on the same telephone handset. However this practice is time-consuming and laborious. Therefore, the MCA believes that this alternative is not a practicable solution to sufficiently constrain mobile voice call termination rates.

C Bundles

Bundle offers are becoming quite common with local network operators and end-users. Indeed, various 'multiple-play' offers have been issued on the market with voice, internet and TV services bundled together in different packages. In this respect, end-user preferences are then determined by convenience, quality and overall price of the bundle.

At present, bundles launched onto the Maltese market do not include mobile services, although their introduction might just be a matter of time. In this sense, the MCA has no market evidence to suggest whether or not bundles that include mobile services could effectively constrain MTRs on the local scene.

Nonetheless, a number of factors could still be considered. For example, if mobile services form part of a bundle, it would be highly unlikely that end-user preferences are skewed in 'favour' or 'against' the respective bundle because of considerations related to MTRs.

Due to the CPP arrangement, the party receiving the call is insensitive to the price of the incoming call and is therefore not concerned about the exact prices and costs of mobile termination when subscribing to a particular network or choosing a particular bundle. This means that an MNO offering a bundle with mobile services would still have the option of raising mobile voice call termination rates whilst reducing prices for the remaining bundle elements. The MCA is therefore of the opinion that MNOs would not be constrained in raising MTRs through the introduction of new bundle offers.

Overall, the MCA considers that, with the present level of technology, the CPP arrangement, and lack of a sufficient competitive constraint from FTM, MTM, and off-net calls, MNOs have an incentive and are able to set MTRs beyond competitive levels.

2.5 Demand Side Substitution at the Wholesale Level

Demand for wholesale call termination is inextricably linked to retail demand for calls. This means that if a subscriber wishes to reach another subscriber either on the same or on another network, the network provider from which the call originates has no choice other than to purchase termination (services) from the network provider to which the called party is subscribed. There are indeed no viable substitutes for termination of calls on the network to which the called party is subscribed.

The MCA holds the view that currently there are no demand side substitutes for wholesale voice call termination which could sufficiently constrain MTRs.

2.6 Supply Side Substitution at the Wholesale Level

If in the short term a product market exhibits a small but permanent increase in the price of a relevant product, firms may alter their plans and start supplying that product. This must happen fast enough in order to prevent the price rise of the product from being profitable for the firm that implemented it.

In this sense, a small but significant increase in the price of MTRs could lead firms to consider providing mobile termination services in competition to those provided by existent MNOs.

However, the MCA holds the view that no provider could readily substitute call termination on a network other than the network to which the called party is subscribed. Calls to a particular user can 'only' be terminated on the network chosen by the called party. The MCA concludes that, in the current circumstances, supply-side substitution for mobile termination services is not possible.

2.7 Further Details to Market Definition

The following sections shall briefly describe three particular issues that further distinguish mobile telephony markets. These include third generation networks, mobile virtual network operators (MVNOs), and the geographic scope of the market.

2.7.1 Third Generation Mobile Networks (3G networks)

Malta's first 3G licences were awarded in August 2005 to Vodafone (Malta) Ltd and MobIsle Communications Ltd, after a call for applications was issued for entities interested to obtain right of use of this spectrum band. Vodafone Malta launched its 3G services in August 2006 and in December of the same year launched 3.5G services. Go Mobile launched its 3.5G network services in early 2007. The third 3G licence was issued to 3G Communications Ltd in August 2007.

2G and 3G mobile handsets support similar basic services such as voice call services and SMSs over their respective networks. In this regard, an end-user with a 2G handset could make mobile voice calls to an end-user with a 3G handset and vice-versa. This also means that the choice of equipment over which a mobile voice call is terminated does not differentiate the product.

In practice, a mobile user is not aware of whether a call would be terminated over 2G or 3G equipment. As a result, the end user pays the same tariff for originating a voice call terminated over a 2G or 3G network.

The MCA holds the view that, based on the principle of technology neutrality, voice call termination on a 3G network is no different to voice call termination on a 2G network.

In addition, the MCA notes that the current voice call traffic patterns and user profiles have not changed significantly following the introduction of 3G networks, although it envisages further growth in voice call traffic patterns within the timeframe of this review. On the other hand, market outcomes with respect to data services and additional 3G mobile services remain uncertain.

The MCA concludes that from a technology and functional point of view, voice calls terminating over 2G and 3G networks will not be different and that both 2G and 3G voice call termination shall therefore be included in the same market.

Furthermore, the incentive for MNOs to set high MTRs for 2G networks still applies for 3G networks since both technologies operate under the CPP arrangement. Indeed, termination services over a 3G network can only be provided by the operator owning the

network. Similarly, customers calling a particular number on a 3G network cannot terminate that particular call over a different network, other than the network to which the called party subscribes.

2.7.2 Mobile Virtual Network Operators (MVNOs)

MVNOs are virtual operators which can provide mobile voice and data services but do not own a licensed spectrum. MVNOs can be classified in various ways. One could differentiate between MVNOs owning a mobile switching centre against those lacking this infrastructure or even between MVNOs adhering to different business models.

For example, MVNOs could enter into business agreements with providers owning network infrastructure and a licensed spectrum - usually MNOs - in order to sell mobile services under a brand name different from that of the respective MNO. Indeed, these MVNOs (sometimes also referred to as 'service re-sellers') buy minutes of use from the licensed MNO and then resell minutes of usage to their customers.

There are also other types of MVNOs which can provide additional services other than re-selling voice call minutes. These are usually referred to as 'enhanced service providers' which, as a general rule, do not own a mobile switching centre.

From the viewpoint of mobile termination, both 'service re-sellers' and 'enhanced service providers' are however constrained to use the same MTRs being charged by the MNOs selling network capacity.

On the other side of the spectrum, one also finds MVNOs owning a mobile switching centre, referred to as 'full' MVNOs. These MVNOs have enough technical facilities to design their own service packages and tariffs, such that they are able to differentiate their products from that of existing MNOs. 'Full' MVNOs could then set their own charges for mobile voice call termination.

However, 'full' MVNOs do not constrain MTRs charged by MNOs because these entities still operate under the CPP arrangement. The MCA also believes that a 'full' MVNO would still fall within the remit of this market definition given that it can set up its own network from which to provide call origination and termination services to its subscribers.

2.7.3 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.

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

Each MNO is considered to be a separate relevant product market for the provision of mobile voice call termination services. The geographic scope of the market then reflects the extent of physical coverage that characterises each MNO. The MCA finally notes that each MNO is licensed on a national basis and offers geographically uniform MTRs.

2.8 Delineation of Mobile Termination Markets

In respect of the analysis presented above, and in accordance with competition law principles, the MCA identifies wholesale voice call termination on individual mobile

networks as relevant for the purposes of ex ante regulation. On this basis, the MCA identifies two wholesale mobile termination markets in Malta:

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

2.9 Views of respondents

This section progressively sets out the views of respondents as expressed in their submissions to the market definition exercise. Before going into the details of the submissions, the MCA finds it appropriate to list the main issues raised by respondents:

A. mobile voice call termination as a separate market;

B. competitive pressures on the setting of MTRs; &

C. the 'waterbed effect'.

A detailed description of respondent views, together with the reactions and conclusions of the MCA is found below.

A. Mobile voice call termination as a separate market

Two respondents to the Consultation Document, namely Vodafone and Go Mobile, suggest that mobile voice call termination does not in itself form a separate market, but rather complements other mobile services in a bundle. More specifically, Vodafone argues that there is a link between the pricing of termination, access and origination services which precludes any possibility for call termination to be provided in isolation. Following on from this, the same respondent suggests that termination, access, and origination rates are subject to the same economic pressures arising from competition. Similarly, Go Mobile argues that there is a clear and undisputed link between the pricing of termination services and access/origination services.

The MCA does not agree with the wider market definition proposed by MNOs. The MCA believes that if MNOs compete for subscribers on the basis of a bundle of mobile services, it would be highly unlikely for these MNOs to influence their subscribers by the price they set for wholesale voice call termination on their own network. Under a CPP arrangement, mobile subscribers of the terminating operator are not concerned about the costs of incoming calls. On the other hand, it is the subscriber of the originating operator which carries the cost of higher MTRs charged by the terminating operator. This means that the user or party which chooses the terminating operator, i.e. the operator providing mobile call termination (MCT) services, cannot impose a constraint on MCT charges as it could on mobile access and call origination. Ultimately, this suggests that mobile call termination does not form part of a market with a bundled product of access, call origination and call termination.

The MCA also notes that the European Commission has included the wholesale market for voice call termination on individual mobile networks as a (separate) relevant market susceptible for ex ante regulation in its revised Recommendation on relevant markets of December 2007.

The MCA concludes that access, call origination and call termination services are not sufficiently interchangeable or substitutable to be defined as one relevant product market. These services not only differ in terms of their characteristics, pricing or intended

use, but also in terms of competition dynamics, and/or the structure of supply and demand for the relevant products.

B. Competitive pressures on the setting of MTRs

Both Vodafone (Malta) Ltd and Mobisle Communications Ltd argue that the setting of MTRs is constrained from a number of factors.

Vodafone (Malta) Ltd states that competitive pressures on MTRs emanate from the fact that MNOs do not differentiate between MTM and FTM call termination charges, and because MTM termination charges are reciprocal. It also argues that high MTM termination are not in the interest of MNOs and that there is no incentive for these to set MTM call termination charges above efficient levels. Vodafone also asserts that SMS has substituted some outgoing fixed voice minutes, and considers this as proof that SMS is a viable substitute for voice calls from the demand side.

Mobisle Communications Ltd argues that Go Mobile does not have the independence of action in setting MTRs because MTRs are also subject to competitive pressures from FTM calls, MTM calls and off-net calls. Go Mobile adds that the same termination charges apply for FTM and MTM calls and that therefore MNOs are constrained from setting high MTRs.

In respect of the above, the MCA agrees that MNOs do apply the same termination charges for calls originated from a fixed or mobile network. The MCA is aware that a call terminated on a mobile network uses the same network elements, and therefore incurs the same cost, regardless of the origination network being either fixed or mobile. In this sense, the MCA holds the view that a fixed operator would not be in a position to constrain MNOs in the setting of their MTRs since it remains a price taker for the purpose of MCT services.

Even in the case of closed user groups, the MCA believes that these cannot effectively constrain MTRs. MNOs have indeed managed to neutralize any pressure on MTRs exerted by mobile subscribers in closed user groups by deploying GSM gateways. GSM gateways have actually provided MNOs with an opportunity to convert fixed voice calls into on-net mobile traffic. The MCA also notes that even though closed user groups schemes have been launched by Vodafone (Malta) and Go Mobile, their take up remains rather limited.

The MCA concludes that MNOs cannot set termination rates at effectively competitive levels in the absence of regulation. In reality, MNOs have an incentive to increase termination rates (i.e. to deviate from the competitive level MTR) since such increases would boost revenue from off-net calls thereby increasing the costs of users subscribed to competing operators. Subscribers of terminating operators would not carry any part of the burden. Although in this case MNOs may rightly argue that reciprocity in termination charges might affect their price setting behaviour with respect to MTRs, the MCA emphasises that reciprocity does not sufficiently encourage MNOs to set low MTM termination rates and that, in the absence of regulation, MNOs would still have no incentive to set MTRs at effectively competitive levels in a way that maximises consumer surplus.

The MCA reiterates that after having examined all the possibilities for substitution to making mobile voice calls, it found no alternative that could arguably put some pressure on MTRs. In this sense, the argument posed by one respondent that SMS could be a substitute for voice calls from a demand side perspective is not viable. The MCA maintains its view that SMSs and voice calls qualify as complementary services rather than substitutes and that SMS usage is not an adequate instrument to constrain MTRs in the absence of regulation.

One respondent also argues that wholesale supply-side substitution could come about from new entrants in the market, which would further dilute any possibility of an operator to act independently from other players in the market. The MCA does not agree with this reasoning because it is not currently feasible for the network originating the call to choose where to terminate its call other than the network to which the called party is subscribed. In addition, wholesale demand-side substitution is not possible given that an MNO cannot terminate incoming calls on a network other than its own.

At a retail level, there is also no possibility for demand-side or supply-side substitution. Local research carried out in 2007 indicates that although consumers are aware of average prices of mobile voice calls, they are relatively insensitive to the pricing and costs of termination on mobile networks. This means that consumers would not choose or switch to a network on the basis of differing termination charges. In other words, if existent MNOs increase their termination charges, consumers would not be able to constrain prices back to their original levels.

C. The 'Waterbed Effect'

Respondents refer to the existence of the 'waterbed effect'. Both Vodafone and Go Mobile argue that they offer call termination not as a stand-alone service but as part of a bundled product also incorporating access and call origination. In relation to this, respondents contend that the prices of outgoing calls are intrinsically linked to the prices charged for call termination, and that any excess profits in the wholesale termination market are competed away in the retail market in the form of lower (retail) prices to consumers.

The MCA however maintains that the market for mobile services cannot be delineated on the basis of a bundle incorporating access, origination, and termination services. In the absence of sufficient demand or supply-side substitutes, the relevant wholesale market for mobile termination services must be considered as an individual mobile network market. Since termination services are essential for making calls and there is no other substitute to such a service, it follows that rather than passing any excess profits earned in the mobile termination market to retail customers, MNOs actually have an incentive to increase MTRs in order to maximise their (termination) profits.

The MCA concludes that the 'waterbed effect' is not a factor that can constrain MNOs from setting MTRs above the competitive level. Any excess profits made in the wholesale termination market will not necessarily be competed away in the retail market. As a result, high MTRs would be detrimental for consumer welfare. Moreover, the MCA does not support the view that subsidising retail charges from high MTRs is economically efficient and believes that this strategy would not increase consumer welfare.

Decision 1

Based on the analysis presented above, the MCA has identified two relevant markets concerning the provision of wholesale voice call termination on mobile networks:

1. Wholesale voice call termination provided by Vodafone (Malta) Ltd.

2. Wholesale voice call termination provided by Mobisle Communications Ltd.

The two markets include wholesale voice call termination services provided over both 2G and/or 3G network equipment.

The MCA also takes the view that the relevant geographic market for the provision of mobile voice call termination services by Vodafone (Malta) and Mobisle Communications is national in scope and limited to their respective network.

Chapter 03 - Market Analysis

3.0 Outline

Chapter 3 presents an analysis of dominance in the market. To this end, this chapter considers a number of criteria for the assessment of SMP, namely market shares, barriers to entry and potential competition, countervailing buyer power, and pricing structure.

The last few sections to this chapter set out the views of respondents as expressed in their submissions to the market analysis exercise. Finally, this chapter outlines the MCA's reactions to these submissions.

3.1 Background to Market Analysis

According to the ECRA, SMP is defined as follows:

"A position equivalent to dominance enjoyed by an undertaking either individually or jointly with others 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."

This follows the definition under Article 14(2) of the Framework Directive and the definition that the Court of Justice case law ascribes to the concept of dominant position in Art. 82 of the Treaty.

Article 8(4) of the ECRA introduces the concept of leveraging of market power and 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".

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

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

3.2 Assessment of Market Dominance

Chapter 2 underlines that in mobile termination markets each individual operator holds a 100 per cent market share of the given market and is therefore likely to be designated with SMP. Although the MCA does not rebut the link between market shares and a finding of dominance, it believes that the existence of market dominance must be assessed against various criteria and not just on the basis of market shares.

The SMP guidelines provide a long list of criteria for assessing market dominance. However, the MCA is of the opinion that, in light of market evidence and the principle of

proportionality, this exercise must carefully take into account a select number of criteria, namely:

- market shares
- entry deterrence
- countervailing buyer power
- pricing structure

3.2.1 Market Shares

An important criterion in the assessment of single dominance is market share. However, as in the case of any other criterion being considered, an analysis of market shares it is not conclusive on its own, especially when it comes to decide whether an undertaking enjoys SMP in a market.

The MCA is of the opinion that market shares higher than 50 per cent would necessitate the designation of SMP. This is in line to the EU Commission Guidelines. Paragraph 75 of these guidelines states that, *"according to established case-law, very large market shares – in excess of 50 per cent - are in themselves, save in exceptional circumstances, evidence of the existence of dominant position."*

The area covered by each MNO is considered to constitute a separate wholesale termination market given that termination on a particular network cannot be substituted by termination on another network. This implies that termination of voice calls over a particular network will have to be terminated on the network of the respective mobile operator.

Hence, every MNO has a 100 per cent market share in terminating calls on its network, in terms of both volumes and revenues of mobile termination minutes.

3.2.2 Entry Deterrence

The MCA recognises that an SMP operator has a strong incentive to foreclose markets and to behave in such a way that makes market entry inefficient and difficult at the very least.

Termination of voice calls is governed by the CPP arrangement which eliminates any opportunity for supply side substitutability. It is in fact not possible for existent market players and new market entrants, including 3G operators, to terminate a call other than on the network to which the called party is subscribed.

Given the current level of technological developments and the forward looking nature of this document, this market condition is set to prevail within the timeframe of this market review.

3.2.3 Countervailing Buyer Power (CBP)

Countervailing buyer power assumes particular relevance when assessing SMP in wholesale voice call termination on mobile networks, considering that each MNO holds SMP over calls terminated on its own individual network. The presence of effective CBP would tend to restrict the ability of suppliers to exercise market power and to act independently of their customers.

Indeed, when customers served in a given market have a certain weight to exert pressure on a supplier of a good or service, they stand to gain a sufficiently strong bargaining

power to effectively stop an attempt by the supplier to increase prices. The extent of countervailing buyer power depends on whether customers could in the first place choose to discontinue purchasing the service or product from that particular supplier or even switch to alternatives.

The MCA maintains that, since the CPP principle is in force, the called parties do not sufficiently care about the costs that other parties incur when calling them. This means that consumers do not have sufficient countervailing buyer power to impact on MTRs set by their mobile service providers.

Another important step in the assessment of the CPB criterion is to evaluate the possibility for providers purchasing network services to exert pressure on other providers selling these services. In this respect, one needs to look at the share of mobile termination minutes being purchased by fixed or MNOs. These shares are depicted in the table below.

Termination on Mobile Networks (%)	2004	2005	2006	2007
Fixed to Mobile	25.61	23.18	19.79	17.66
Mobile to Mobile (off-net)	23.99	26.04	25.30	25.10
Mobile to Mobile (on-net)	35.37	37.14	43.02	46.34
International to Mobile	15.03	13.64	11.88	10.88

A *Fixed-to-Mobil*e (FTM)

Fixed network operators (FNOs) are important buyers of mobile call termination services (MCT). In this sense, local FNOs such as GO and Melita Cable could have a relatively strong weight as purchasers of MCT services. This could put enough pressure on a provider and constrain its ability to set high termination charges.

A hypothetical way of how FNOs could exercise CBP is to threaten not to interconnect unless the price of mobile termination services is considered acceptable or reasonable. However, it is very difficult for this scenario to materialise given that all operators require interconnection with each other to permit call traffic between their customers and those subscribed to other networks.

Furthermore, GO is also designated with a universal service obligation in accordance with Article 30 of the ECNSR. GO is therefore obliged to terminate all calls in order to ensure end-to-end connectivity. As a result, any countervailing buyer power that GO might have through its large market share in the fixed calls market is not sufficient to constrain MTRs.

The MCA therefore believes that FTM countervailing buyer power is not sufficient to ensure competitive MTRs.

B *Mobile-to-Mobile (MTM - off-net)*

Mobile operators themselves purchase termination services from each other. The share of off-net termination minutes has remained relatively stable during the past three years at around 25%.

In Malta we have only two MNOs namely Vodafone and Go Mobile. Given that these two operators have a fairly equal number of subscribers, neither of them has sufficient countervailing buyer power to influence the mobile termination rate of the other.

If for example Vodafone (or GO) had to increase its termination rate, the retail price of calling a Vodafone number would increase for a Go Mobile customer. Given that customers are mainly concerned with the cost of making an outgoing call and not of receiving a call, Vodafone customers would not particularly mind such a price increase.

This price increase would therefore be detrimental for customers of the competing operator. On its part Go Mobile would then have an incentive to react and in so doing increase its termination rate, knowing beforehand that this would not affect its own customers. In the end, this strategy results in customers paying higher retail charges to make off-net mobile-to-mobile calls.

In the light of the CPP principle, MNOs do not face any constraints from their customers if they increase MTRs. The lack of retail pressures on MTRs would therefore not induce a wholesale provider to offer low MTRs, given that a hypothetical price increase would only be translated into higher charges for the customers of competing networks.

C Mobile-to-Mobile (MTM - on-net)

As of 2006 both MNOs have launched lower retail tariffs for on-net MTM calls. As depicted in the table above the share of on-net terminated minutes (on-net traffic) has thereafter seen a steady increase.

Although MNOs still incur some costs in terminating a voice call over their own network, it is logically more beneficial for them to maintain or even increase traffic volumes on their network. By offering lower tariffs for on-net calls they are also enticing more users to their network, since calling a friend or relative on the same network would be cheaper.

Given that MNOs offer lower on-net call tariffs, these operators could also decide to push down MTRs so as to lower on-net MTM rates even further. Nevertheless, the MCA believes that operators tend to compensate lower revenue streams from on-net calls with higher revenues from off-net calls. This in itself is an incentive for MNOs to keep high MTRs not to lower termination charges so as to keep the cost of off-net calls more expensive.

The MCA therefore concludes that MNOs tend to offer lower retail call rates for on-net MTM calls. However this in itself does not guarantee that MTRs will be set at a competitive level.

D International-to-Mobile

MNOs also terminate international calls on their network. However, the share of international minutes terminated on mobile networks has been declining over the past 3 years and now only accounts for the smallest share of total call minutes terminated on mobile networks.

Overall, the MCA concludes that there is no one particular factor that would induce local operators to reduce their charges with respect to mobile termination. It is also worthwhile to point out that there is no wholesale operator or group of operators that can effectively constrain MTRs to a level commensurate with a competitive outcome.

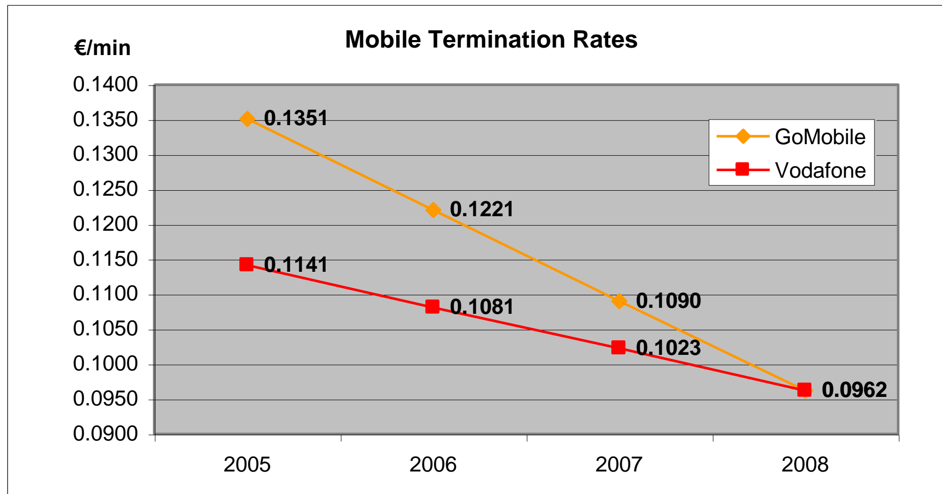
3.2.4 Pricing structure

Prices provide useful information on the degree of competition in the market. If high prices are set irrespective of costs, profits are expected to be persistently and

significantly above the competitive level. However, this rationale does not hold in markets where competition prevails.

In mobile termination markets, MNOs do not face competition from other operators. This allows MNOs to exercise market power and to set high MTRs. Regulatory intervention would therefore be necessary to ensure that termination charges are set close to the competitive level as much as possible.

The MCA's regulatory intervention in the price setting behaviour of mobile termination rates has, for the last few years, taken the form of a glide path[7]. MTRs were adjusted to reach symmetry as of January 2008.



The MCA believes that factors such as countervailing bargaining power or self-interest did not contribute to the decline in MTRs. Indeed, without the glide path obligation, termination rates would have probably remained well above the existing rates.

The MCA believes that, in the absence of regulatory intervention, MNOs would have no incentive to reduce MTRs and to lower interconnection rates.

3.3 Conclusion on SMP designation

The MCA concludes that Vodafone Malta Ltd. and MobIsle Communications Ltd. enjoy significant market power over calls terminated on their own network. This conclusion is based on the following:

- MNOs hold a 100 per cent market share on termination over their network;
- lack of sufficient countervailing buyer power with respect to voice call termination;
- absolute barriers to entry for potential competitors;
- the calling party pays (CPP) principle predominates.

3.4 Views of respondents

The Consultation Document proposes that each MNO has SMP on call termination over its own network. Whilst Melita Cable agrees with the proposed SMP designation on both

[7] Decisions on termination rates: http://www.mca.org.mt/infocentre/openarticle.asp?id=748&pref=2

Vodafone and Go Mobile, the latter MNOs disagree and claim that both at a retail and wholesale level the market for call termination is subject to competitive forces. This and other issues raised by respondents in their reaction to the MCA's market analysis are set out in the sections below.

Before going into the details of the submissions, the MCA finds it appropriate to list the main issues raised by respondents. These include:

A. independence of action in setting MTRs;

B. competition at the retail level for MCT services; &

C. Price Competition, FTM, & MTM call termination.

The following sections will provide a detailed description of the above and the MCA's reaction to the arguments put forward by respondents.

A. Independence of action in setting MTRs

On the basis of its market analysis the MCA determined that wholesale voice call termination on Vodafone's and Go Mobile's network is not effectively competitive. Accordingly, the MCA proposed the designation of both Vodafone and Go Mobile with SMP in their respective relevant market.

In their submissions, Go Mobile and Vodafone marked their disagreement with MCA's SMP designation by repeatedly claiming that the mobile retail market is effectively competitive to such an extent that they (the MNOs) do not have independence of action in setting MTRs, even where regulatory intervention is absent.

Respondents also assert that the arrival of a third MNO and three BWA operators would further dilute any possibility of any operator acting independently from the other players in the market.

As already highlighted in the Consultation Document, the MCA assessed market dominance against a number of criteria including market shares, entry deterrence, pricing structure, and countervailing buyer power. Market evidence suggests that, in the absence of regulatory intervention, and on the basis of the criteria mentioned above, there is indeed a case to designate each individual operator with SMP.

Indeed, contrary to what Go Mobile and Vodafone have been claiming, existing MNOs have the ability and incentive to set voice termination charges at profit maximising levels to the detriment of consumers. In other words, in the absence of regulation, existing MNOs enjoy pricing freedom or independence in the setting of MTRs. This situation is not expected to change over the next two years even in a scenario where new players enter the market. Considering that any new entrant in the market would only be able to provide termination on its own network, potential competition would not constrain the setting of MTRs.

B. Competition at the retail level

It is clearly apparent from the responses to consultation that both Vodafone and Go Mobile believe that the mobile retail market is effectively competitive. Both MNOs argue that the wholesale mobile termination market is also subject to competitive forces, with MTRs declining independently of any MCA regulatory intervention.

Vodafone argues that price and non-price competition at the retail level of the mobile market has resulted in a consistent downward trend in mobile retail tariffs. In this

context, Vodafone underlines its belief that MTRs are subject to vigorous competition at the retail level i.e. the downstream market.

On a similar note, and consistent with the views expressed on a bundled mobile product of access, call origination and call termination, Go Mobile claims that interconnection rates, termination rates, and retail prices have gone down with the advent of competition and not as a result of MCA's regulatory intervention.

On the other hand Melita Cable agrees that - given a 100 per cent market share enjoyed by existing MNOs over call termination on their own network, the risk of entry deterrence, the CPP arrangement, and the lack of countervailing buyer power (CBP) – both Vodafone and Go Mobile hold a position of SMP over wholesale voice call termination on their own network.

The MCA reiterates its view that mobile call termination should be reviewed as a separate market from access and call origination. In this sense, the MCA does not agree with the claims of both Go Mobile and Vodafone that prices of access, call origination, and call termination decreased with the advent of competition. Whilst MNOs may have an incentive to lower access and call charges for their retail customers, this incentive is clearly absent for termination services. The MCA reiterates that MNOs have every incentive to increase MTRs, noting again that the observed decline in MTRs is attributable to regulatory intervention. Even a cursory examination of what happened since 2005 would show that MNOs gradually reduced their MTRs not on their own initiative but on the basis of a glide path mechanism as mandated by the MCA. In the absence of such a mechanism, market forces would not have been strong enough for MNOs to bring down MTRs.

C. Price competition at the retail level

Go Mobile raises the point that there is price competition in the market at the retail level, characterised by innovation, market segmentation, and well informed consumers which could easily exercise their choices. Further to this, Vodafone argues that the mobile market in Malta provides sufficient evidence of demand side price sensitivity, quality of service, innovation, and differentiation between service providers, all contributing to a downward trend in mobile retail tariffs.

In view of the above, the MCA acknowledges that the provision of mobile telephony services over the last decade has in fact changed dramatically, especially with the advent of new services and an overall better quality-price relation for the services offered by MNOs. The MCA is also cognisant of the fact that, in general, consumers have a good awareness of the costs of their regular bills and the relative level of prices of different retail tariff plans.

Also, in considering the relationship between demand side price sensitivity and retail prices, the MCA took into account the impact of wholesale rates on retail prices. Given this consideration, the MCA notes that since termination services are an input into retail products sold by the MNO, the setting of wholesale voice call termination charges could potentially have an impact on the correlation between demand side price sensitivity and retail prices.

Nevertheless, the MCA believes that demand side price sensitivity has been low in pushing retail rates down, especially for FTM calls and off-net MTM calls. This is so because the provision of wholesale termination services is governed by the CPP arrangement.

With the CPP arrangement, the called party would not be 'sensitive' to the price that the calling party has to pay in order to terminate a call on the network to which the called

party is subscribed. This means that the called party is price inelastic to the setting of MTRs. Consequently, MNOs would also have little incentive to reduce termination charges on their own initiative, especially in an unregulated environment.

It is also argued that the ease with which subscribers can churn from one operator to the other - most especially after the inception of number portability - would constrain the ability of MNOs to increase termination rates. The MCA however believes that, given the CPP arrangement, the cost of inbound calls would not be a major consideration for mobile subscribers. Given this lack of exposure that retail customers have to termination charges, the CPP arrangement precludes any possibility for mobile subscribers to choose their network on the basis of the price of an incoming call and to switch their network as a result of an increase in such prices. This again leaves MNOs with very little incentive to ensure that termination charges are set at the efficient level, especially in the absence of regulation.

Overall, the MCA concludes that reductions in wholesale rates should have an impact on retail prices since wholesale rates are an important cost element in setting retail tariffs for off-net calls. Consequently, the MCA considers that further reductions in termination rates mandated through regulatory intervention are essential to increase the likelihood of lower off-net and fixed to mobile voice call retail tariffs.

D. Efficiency of MTM & FTM call termination rates

Arguments put forward from both Vodafone and Go Mobile have suggested that in order to retain customers as well as to attract new ones, any profits that are generated from termination services are used to subsidise other mobile retail services such as subscription and outgoing calls. Taking this argument further, respondents conclude that there are sufficient competitive constraints to ensure that MNOs subsidise mobile retail services via termination revenues efficiently and in a manner which maximises consumer welfare.

In view of the above arguments, one respondent also claims that although there is a tendency for FTM call termination charges to be set above efficient levels, as opposed to MTM termination charges, there are indeed some competitive constraints that prevent termination charges from being set in complete isolation and without any regard to their impact on consumers.

The MCA disagrees with the above statements on a number of counts. First of all the MCA is not convinced from the assertions of respondents regarding the scope of termination revenues and the question of excess profits. The MCA knows that, in an unregulated environment, the costs incurred via termination rates set above the efficient level comes at the expense of subscribers, especially subscribers originating their call from a fixed line and those making off-net MTM calls. Even in the event of a complete pass through of (termination) profits to other mobile services, termination rates set above efficient levels would feed through into higher retail prices for FTM and MTM (off-net) calls. This, in the end, is not of benefit to consumers.

The MCA believes that the freedom that MNOs enjoy in the wholesale mobile termination market could distort consumers' choices in making calls. This also raises the risks for anti-competitive price discrimination by MNOs against new market entrants.

With an overall mobile penetration rate exceeding the 90 per cent mark, there is indeed a higher risk that MNOs exploit their position in the termination market to impair the ability of their rivals to compete for customers in the retail market. The MCA can therefore conclude that the use of termination revenues for the purposes suggested by MNOs is not efficient of itself, particularly when considering FTM and off-net call termination, and is therefore counterproductive in terms of consumer welfare.

Of particular significance at this point is the fact that the current applicable charges for terminating a FTM and MTM call on a particular network are the same. In this sense, even though the arguments for setting MTM termination rates at the efficient level might differ from those for the FTM scenario, the MCA believes that both MTM and FTM termination rates should be equally set at the efficient level.

It is incorrect for a MNO to assume that MTM termination rates are, or should be, more efficient than FTM rates. The termination rate for terminating a call over a particular mobile network needs to be fully efficient regardless of the originating operator (i.e. for both mobile and fixed originating calls). Otherwise, the market risks facing distortions both in terms of consumer choice (such as the choice between making a FTM call and an on-net MTM call) and resource allocation, and an impending risk of anti-competitive behaviour.

Decision 2

The MCA designates both Vodafone (Malta) Ltd. and Mobisle Communications Ltd. with significant market power (SMP) in the market for the provision of wholesale voice call termination on their individual networks.

Chapter 04 – Regulatory Implications

4.0 Outline

This chapter outlines the nature of the potential competition problems identified, given that both Vodafone and Go Mobile had been designated as having SMP.

Following a detailed description of the views expressed by respondents in their submissions to consultation, this chapter sets forth the regulatory obligations being mandated by the MCA.

4.1 Background

In accordance with Regulation 10(4) of the ECNSR, where an operator is designated as having SMP 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 sub regulation (2) of Regulation 10 of the ECNSR or to maintain or amend such obligations where they already exist.

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

4.2 Selecting Regulatory Obligations & Remedies

In accordance with regulation 37(2) of the ECNSR, the MCA is obliged to ensure that any obligations imposed under sub regulation (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 ECRA.

The MCA has established that the relevant markets for voice call termination services on individual mobile networks are not effectively competitive. In this respect, this review finds that market forces are insufficient to impact MTRs in the absence of regulation, whilst acknowledging that regulatory intervention is necessary to enhance competition.

In selecting regulatory obligations, the MCA has based its decisions on the principle of proportionality, whilst employing the most necessary and the least burdensome remedy or set of remedies.

4.3 Current Regulatory Obligations

In its first round of market analyses for wholesale voice call termination on mobile networks, the MCA identified four main factors that could distort competition, namely tacit collusion, excessive pricing, price discrimination, and denial to interconnect.

Based on the nature of these competition problems, the MCA mandated a set of remedies on MNOs following consultation carried out at an earlier stage. The MCA believes that such an approach is proportionate in the prevailing circumstances and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act. The remedies impose obligations on both Vodafone and Go Mobile:

- to meet reasonable requests for access to/and use of their specific network facilities;
- not to show undue preference or undue discrimination in the provision of interconnection services;
- to ensure transparency in accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- to maintain a cost accounting system to allow for the calculation of costs related to the provision of specific types of interconnection and, or access;
- to follow a 3 year glide path to reduce termination rates to a symmetric level; and
- to implement accounting separation to facilitate the verification of compliance.

4.4 Factors distorting Competition

The MCA believes that the wholesale market for voice call termination on an individual mobile network is not competitive. The evidence from the market analysis suggests that Vodafone and Go Mobile continue to enjoy SMP for termination services over their own individual network and this is not expected to change in the period until the next market review.

The MCA has also identified three potential risks to competition in the market, namely excessive pricing, price discrimination, and interconnection at unreasonable terms. More detail on these is presented below.

4.4.1 Excessive Pricing

The MCA holds the view that MNOs have an interest in charging excessive MTRs because this increases the inflow of revenues from interconnection with other fixed or mobile network operators.

Excessive pricing for mobile termination services would make FTM calls and off-net mobile calls more expensive, thus leading to an increase in prices for these types of calls. Given the CPP principle end-users would not have any option but to incur higher costs for making mobile calls.

Excessive pricing would also open up an opportunity for a particular MNO to discriminate in favour of on-net calls. It could also be detrimental to market expansion in the mobile retail market.

4.4.2 Price Discrimination

An operator could charge 'itself' or its subsidiary a lower termination than it charges to other fixed or mobile operators. Through these price discriminatory practices an operator could indeed foreclose the retail market from its competitors.

For example, an operator could set high termination charges on other operators so as to cross subsidise very low on-net MTM calls. In this sense, other operators would find it

more difficult to compete in the retail market given that these are faced by much higher costs for off-net MTM calls.

New entrants or networks with a small number of subscribers would find themselves at a greater disadvantage, especially when the on-net termination rate differs significantly from the off-net one.

4.4.3 Interconnection at Unreasonable Terms

Although it is common practice for network operators to negotiate interconnection agreements, the approach to such agreements could vary significantly from one case to another to such an extent that it could even result in a potential competition problem.

In a market where operators are competing for customers of the same service, some operators might find it to their advantage to delay, refuse, or even impede interconnection. This could happen in various ways such as by charging high interconnection rates to foreclose markets from existent or potential competitors for the same pool of retail customers.

Network operators have every incentive to maximise profits and would therefore be keen to maintain high interconnection charges, whilst also foreclosing new market entry.

4.5 The MCA's Regulatory Approach

After having identified potential competition problems with respect to the wholesale market for mobile voice call termination, the MCA is required to impose obligations on MNOs to ensure that these problems do not materialise.

The MCA holds the view that any regulatory proposal shall be based on the nature of the competition problems it has identified in the relevant market, and that each proposal is proportionate and justified in light of the objectives set out in Article 4 of the Electronic Communications (Regulation) Act.

The MCA also intends to keep a reasonably close watch on market developments to ensure that regulatory obligations on operators remain relevant within the two year timeframe of this market review. If the MCA deems necessary, a new market review would be undertaken at any time in response to changes in market conditions.

The following sections will now take a forward-looking view, and discuss those obligations which the MCA believes must be imposed on local MNOs (each designated with SMP) to ensure that competitive practices prevail in the market and that customers reap the benefits of competition.

4.5.1 Access Obligation

The MCA has the function, under Regulation 15 of the ECNSR, to ensure that electronic communications services provide end-to-end connectivity through the appropriate granting of access to, or interconnection with, other networks, without prejudice to an SMP designation. It is therefore authorised to impose obligations on undertakings that control access to end-users in order to ensure end-to-end connectivity where this is not already the case.

The access obligation ensures that SMP operators provide access to their infrastructure for the purpose of providing voice call termination and interoperability of network services (through interconnection). The obligation to provide access already exists and has been enforced on Vodafone and Go Mobile through the 2005 market review decision. The access obligation requires both operators to publish a cost oriented reference

interconnection offer (RIO), which is also subject to the transparency and non-discriminatory obligations.

In this review the MCA confirms that both Vodafone and Go Mobile have SMP on the market for voice call termination on their individual mobile network, and is therefore of the opinion that the access obligation shall be maintained, in accordance with Regulation 21 of the ECNSR.

MNOs are required to have interconnection agreements for the termination of voice calls on their respective networks and to have similar interconnection agreements with all other operators. MNOs shall therefore negotiate in good faith with undertakings making new requests for interconnection services.

MNOs shall provide network access for the provision of voice call termination services to every public electronic communications network providers who make such a reasonable request (Regulation 21(2) of the ECNSR).

The reasonableness or otherwise of the request shall be evaluated on the basis of Regulation 21(4) of the ECNSR and the decision to provide interconnection or otherwise will be subject to scrutiny by the MCA in accordance with its powers at law where commercial negotiations between the two parties fail.

In the latter case, the MCA will be the final arbiter in deciding whether the request is truly reasonable or otherwise. Moreover, the MCA intervention is aimed at ensuring that no interconnection services are withdrawn unfairly and at the same time that no obligations are imposed unduly on existent operators.

Interconnection services shall be provided together with any services, facilities or arrangements which are necessary for the provision of such services. The said MNOs shall also ensure that all reasonable requests for interconnection services are expedited in a fair, reasonable, and timely manner as required under Regulation 21(3) of the ECNSR.

4.5.2 Non-Discriminatory Obligation

This obligation is to ensure that MNOs do not provide wholesale services on terms and conditions that discriminate in favour of a particular undertaking. More specifically, the imposition of this obligation is intended to avoid a situation whereby an SMP operator would have the ability to exploit its market power in order to discriminate when providing termination services to itself and those supplied to other fixed or mobile operators.

The obligation in question is not limited to a particular form of non-discrimination or a particular behaviour but incorporates all forms of discrimination as set out in Regulation 19 of the ECNSR. Indeed, besides tackling price-related discriminatory behaviour, the obligation also targets 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.

The MCA concludes that the non-discrimination obligation shall be maintained on Vodafone and Go mobile. This is to ensure that SMP operators do not exercise any discriminatory behaviour in relation to interconnection within the timeframe of this review.

4.5.3 Transparency Obligation

The imposition of the transparency obligation on MNOs is to ensure that the access and non-discrimination obligations are observed. The transparency obligation would require MNOs to deliver services of equivalent quality to all operators and that alternative operators have sufficient information and clear processes to which they would not

otherwise have access. This would assist their entry into the market and directly targets the nature of such problems.

Regulation 18 of the ECNSR authorises the MCA to impose transparency obligations on undertakings holding SMP 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, given that both SMP operators have an obligation of non-discrimination, the Authority is obliging the said operators to publish a reference interconnection offer (RIO). The RIO 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 shall impose changes to RIOs to give effect to the obligations imposed under the Act. The Authority also reserves the right to specify the precise information to be made available, the level of detail required, and the manner of publication. However, for the time being, the MCA is not proposing to increase the requirements relative to the publication of information with respect to the existing reference offer. This notwithstanding, the MCA maintains the right to establish or alter the extent of the obligation to publish information in the reference offer at a later stage.

The transparency obligation on both MNOs should therefore be maintained. This obligation requires operators to make public information regarding call termination rates, network and technical specifications, terms and conditions for supply and use, and accounting information as required by the MCA.

The imposition of the transparency obligation instils confidence in the market that services are not provided on a discriminatory basis. It also helps avoid any possible disputes and accelerates negotiations between existing and potential operators.

4.5.4 Accounting Separation

The MCA believes that effective monitoring of the transparency and non-discrimination obligations relies on the existence of accounting separation. In this regard, accounting separation facilitates the verification of compliance for services that the MNOs provide to other operators.

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

Accounting separation also provides support to the price control obligation so as to ensure that wholesale prices are set in a transparent and non-discriminatory manner.

The accounting separation obligation is already mandated on Vodafone and Go Mobile since 2005. This obligation is to be maintained. The MCA has already issued guidelines in 2002 on how this obligation shall be implemented.[8] This notwithstanding, the MCA reserves the right to amend the current obligation in accordance with its powers at law,

[8] "Accounting Separation and Publication of Financial Information for Telecommunications Operators - Report on Consultation and Decision", MCA, October 2002
http://www.mca.org.mt/infocentre/openarticle.asp?id=323&pref=1

in particular Regulation 20 of the ECNSR, and the principles of reasonableness and proportionality.

4.5.5 Price Control & Cost Accounting

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

The MCA considers the imposition of price control and cost accounting obligations as essential tools to ensure efficient MTRs, because otherwise MNOs have no incentive to lower termination charges through self initiative.

The said obligations have already been mandated on Vodafone and Go Mobile since 2005. Given the nature of competition problems identified above, the MCA is now proposing to maintain these obligations on both MNOs.

As explained earlier on, the price control obligation introduced in 2005 took the form of a 3 year glide path with MTRs declining on a yearly basis and reaching a symmetric level by January 2008.

A Price Control

The MCA has assessed a number of options for the implementation of the price control obligation. In principle the MCA is of the opinion that a cost oriented MTR should be based on a cost model designed on the specifications of an efficient mobile operator.

The MCA however notes that, in the present circumstances, this option cannot be implemented for a number of reasons. First, this model requires extensive technical and financial information. Furthermore, given that the deployment of 3G networks in Malta is a recent event, audited financial and technical data on 3G network operations are not yet available. Usage statistics are also scarce since the majority of end-users do not make use of 3G services.

Second, existing MNOs are utilising the 2.5G and 3G networks in parallel, which may distort the efficient costs allocated to MTRs which are currently based on a top-down FAC model. Given these considerations the MCA is of the opinion that for the time being and for the purpose of the two year timeframe of this review, the use of the current cost models maintained by existing MNOs is not a feasible option . This timeframe should also give the MCA the required time to explore the possibility of building its own cost model which will in turn be based on the guidelines and best practice recommended by ERG.

Another option which has been considered was the extension of the glide path for a further two years, given the MCA's success in reducing local MTRs for the past three years through this method. However, the MCA notes that the continuation of the glide path method would require a 'target' rate to be achieved in two years time. The target rate would have to be established and based on the cost oriented rate of an efficient MNO. Given the temporary unavailability of such a cost model, the MCA cannot select the glide path option without a target-rate at its disposal.

The final option which was considered by the MCA was the pegging of the local MTR with international benchmarks. The MCA evaluated a number of potential benchmarks including an index of the EU27 countries , a distilled EU27 index excluding 'outliers', an index of EU countries having a cost model, and finally a EU27 index of the lowest termination rate applicable in each EU country.

The MCA believes that, in the current circumstances, the best option for the implementation of the price control obligation shall take the form of a pegging mechanism linked to the average percentage reduction in the EU 27 MTR index.

The MTR for both Vodafone and Go Mobile for the years 2009 and 2010, will be set according to the average yearly percentage reduction in the EU 27 average MTR. The EU 27 average rate is to be determined from official data (backdated by one year) published by the EU Commission.

A maximum and minimum cap of +/-10% variation in the local termination rate should apply to limit any significant unexpected shocks in the average yearly percentage change in the EU27 MTR. This implies that if the EU average MTR were to increase or decrease in excess of the 10% margin, Vodafone and Go Mobile would only be requested to adjust their termination rate by 10% over the existing local termination rate. This mechanism ensures stability in MTRs being charged locally.

The first adjusted MTR will be issued in March 2009, to be applied as from 1st June 2009, and a revised adjusted rate will again be published in March 2010, to be applied as from 1st June 2010. During 2010 the MCA will then carry out a fresh review of mobile termination markets.

The MCAs decision on the price control is to be implemented without prejudice to developments that may occur during the two year timeframe of this review, such as the development of a cost model by the MCA.

B Cost accounting

The MCA underlines that a cost accounting obligation is being mandated on both Vodafone and Go Mobile in order to monitor, on an ongoing basis, costs incurred by operators as opposed to the termination charges being applied.

The cost accounting data represents valuable information on the allocation of costs onto different services. This can also prove valuable in the eventuality of the development of a new cost model, even if this were to be based on a bottom-up methodology as, in practice, cost accounting models are hybrid systems which still make use of top-down data.

The methodology to be employed by both MNOs for the cost accounting obligation shall follow the MCA decision on this obligation which has been in place since 2002[9].

4.6 Views of respondents

On most counts, MNOs question the need for regulatory intervention by the MCA. Both Vodafone and Go Mobile argue that MCA's approach to regulatory intervention is inappropriate given the size of the local market.

[9] Implementation of Cost Based Accounting Systems for the Telecommunications Sector - Report on Consultation and Decision - July 2002 - http://www.mca.org.mt/infocentre/openarticle.asp?id=59&pref=1

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

Implementation of Cost Based Accounting Systems and Accounting Separation, MobIsle Communications, April 2004. - http://www.mca.org.mt/infocentre/openarticle.asp?id=583&pref=2

In dealing with the details of the submissions, the MCA believes it is best to focus first on the comments raised by respondents in relation to the case for regulation of wholesale voice termination on individual mobile networks, followed by an overview of comments raised in relation to each remedy proposed in the Consultation Document. Comments by respondents and the corresponding MCA considerations are categorised as shown in the list below:

A. Principles upheld in the application of regulatory intervention;

B. The access obligation: consultative input and MCA decision;

C. The obligation of non-discrimination: consultative input and MCA decision;

D. The transparency obligation: consultative input and MCA decision;

E. Accounting separation: consultative input and MCA decision;

F. Price control and cost accounting: consultative input and MCA decision; and

G. Regulatory matters with respect to new entrants in the mobile market.

A. Principles upheld in the application of regulatory intervention

Two respondents contend the regulatory intervention by the MCA and argue that the need for such intervention had not yet been proven. They specify that an assessment of the costs and benefits of such intervention must be undertaken to avoid the risk of a negative regulatory effect on competition in the market. In addition, the same respondents argue that the proposed remedies are neither proportionate nor justifiable. This contrasts sharply with the views of one respondent (Melita Cable) which states that the remedies as proposed by the MCA are fair, reasonable, and appropriate.

Go Mobile underlines that, when carrying out its market review, the MCA is more governed by a desire to maintain the status quo on the regulation and remedies imposed rather than to ensure that the remedies applied are proportionate and justified. Go Mobile adds that the desire of the MCA to maintain all the previous remedies afforded under the previous regime is inconsistent with the spirit and intention of the new Framework to promote competition and does not contribute to the development of the internal market. It also argues that the market failures identified by the MCA in its market review does not necessitate the imposition of remedies.

Vodafone puts forward a similar argument stating that the MCA has neither adduced sufficient evidence of identified market failures nor has it provided any evidence that any particular recommended remedy will actually address and solve that particular market failure. It also asserts that the MCA fails to provide evidence that current MTRs are set at inefficient levels. Indeed, Vodafone believes that MCA has over-specified the remedies necessary to ensure that termination charges are set at efficient levels. Vodafone also notes that although remedies such as cost accounting and accounting separation have been imposed in the past on existing MNOs, this does not in itself warrant that these remedies remain in force in the future.

In turn, Go Mobile argues that the MCA should be fully cognisant of the fact that excessive regulation in an open and competitive market may bring with it greater costs than the problem it is intended to rectify. Go Mobile argues that regulation is only justified where its benefits exceed its costs, otherwise it would be detrimental to

consumers. Further to the above, Vodafone states that the remedies proposed by the MCA are unnecessary, overly intrusive, burdensome, and costly to implement.

With reference to the costs and benefits of regulation, both Vodafone and Go Mobile concur on the need of a Regulatory Impact Assessment (RIA) and the need of a cost benefit exercise before imposing remedies on the market. Go Mobile asserts that at the core of MCA's regulatory decisions and imposition of remedies there should be a Regulatory Impact Assessment (RIA) and a cost benefit analysis that carefully assesses the benefits and costs that can be reasonably expected to arise with regulation. Similarly, Vodafone argues that the MCA should conduct some sort of cost benefit analysis before taking a decision to impose remedies.

Vodafone and Go Mobile also share the concern that the regulatory regime being proposed would not necessarily be proportionate and justified in the light of local market circumstances. In this respect, one respondent claims that the MCA has not seriously engaged in an exercise of proportionality when recommending remedies, but that it rather proposed the comprehensive list of remedies as allowed under the current Regulatory Framework.

The MCA believes that the case for regulation of wholesale mobile voice call termination has been demonstrated beyond doubt from the evidence presented in the market analysis above. The MCA reassures respondents that the application of regulatory obligations is first of all consistent with the principles of competition law. Each regulatory obligation mandated by the MCA has been carefully tailored on the nature of the problem identified in a way which the MCA deems reasonable, and in line with the MCA's statutory duties to promote competition, to further the interests of citizens, and to encourage investment and innovation.

It is also of note at this point that the Consultation Document provides sufficient evidence on a number of competition problems that may arise as a result of MNOs enjoying SMP in the market for wholesale voice call termination over their individual networks. The objective of the MCA when imposing ex ante regulation is therefore that of anticipating the occurrence of a particular competition problem in the relevant market(s) by selecting the appropriate remedies. In this sense, the MCA is justified to impose obligations that address and overcome high MTRs and its consequent adverse effects on competition in retail markets.

The MCA considers that high MTRs are a competition problem as long as they are set above the efficient level of an effectively competitive wholesale mobile termination market. As already described in some detail in the Consultation Document, market forces are insufficient to ensure that the pricing of MTRs is set at efficient levels. Evidence suggests that, in the current circumstances and the foreseeable future, existent MNOs are able to set MTRs above the competitive level at the expense of reducing overall welfare. The MCA therefore considers that addressing MTRs themselves is also in line with the principles of the new regulatory framework.

In response to the question of why the MCA has not shown how the proposed remedies would actually address and solve a particular market failure, the MCA reiterates that its stated objective is to anticipate and address the identified competition problems in the relevant market and to prevent leveraging of market power. Under the framework, the MCA is neither required to provide evidence of existing competition problems nor to show how the remedies will mitigate these problems, but it is only required to identify a potential problem that may arise as a result of SMP.

These problems have indeed been identified and presented earlier on, together with a description of how each and every remedy will minimise the chances for such a problem to occur.

One respondent also states that it could not understand why the MCA was maintaining the same remedies imposed in the past. The MCA notes that the focus of market remedies remains that of finding a solution to the competition problems that are identified. The potential competition problems identified by this market review are much similar to what has been identified in 2005. Given that the MCA cannot ignore past evidence when assessing the future prospects of the relevant market, the MCA finds it appropriate to mandate obligations on access, transparency, non-discrimination, accounting separation, price control, and cost accounting.

At one point, respondents also make reference to the need of a cost-benefit analysis to assess the benefits of regulation versus no regulation (i.e. to quantify the costs and benefits of a remedy before imposition). The MCA believes that such an exercise would go beyond the purpose and scope of this review. A cost benefit analysis is not practical in the current circumstances because apart from lengthening the process of the review of regulation, it achieves little more than what has already being proved through this document. The MCA also notes that any benefits for consumers that may result from a cost-benefit exercise are not easily quantifiable; this limitation further dilutes the scope of carrying out such an exercise.

The MCA therefore stands by its rationale of proposing a remedy only after having identified a potential competition problem in the market, and only after having provided the necessary justification to why the proposed remedy will bring about benefits to consumers.

The MCA believes that the way it is approaching regulatory intervention is proportionate in the circumstances and justified in the light of the objectives as set out in the Framework. It also believes that the imposition of the proposed remedies is the least burdensome for MNOs and the most appropriate in the current circumstances and the timeframe of this review. The MCA will continue to monitor developments in the market to ensure that it is applying justified remedies.

B. The access obligation: consultative input & MCA decision

Vodafone agrees that an obligation to provide interconnection is necessary, however it argues that the access obligation as proposed by the MCA for mobile voice call termination is unnecessary. Vodafone believes that voice call termination agreements can be reached satisfactorily through the normal process of commercial negotiation regardless of whether or not an access obligation exists.

Go Mobile argues that the imposition of the access obligation as proposed in the Consultation Document does not fulfil the required criteria in Regulation 21 of the ECNSR. The same respondent claims that the MCA is not justified for imposing an access obligation given the possibility that within a few years time Malta is expected to end up with a good number of competing infrastructures in a technology neutral and highly converging electronic communications market.

The MCA notes that there are good reasons why the access obligation should be imposed on the market for wholesale mobile voice call termination. The access obligation provides greater certainty in the market given that it obliges dominant undertakings to provide access to termination services on their own network, whether under the form of interconnection, or access to associated facilities, or services for the purposes of interconnection. Indeed, the access obligation requires MNOs with SMP to meet reasonable requests for access to and the use of their infrastructure for the purposes of providing voice call termination (interconnection) services in a fair and timely manner.

The MCA therefore considers that the access obligation is a proportionate and justified measure, the benefits of which will ultimately be enjoyed by consumers through enhanced competition and subsequently lower retail prices.

C. The obligation of non-discrimination: consultative input & MCA decision

Only one respondent referred to the obligation of non-discrimination. In its submission, the said respondent made it clear that it supports an obligation that does not allow an MNO to discriminate in favour of a particular undertaking because such an obligation would enhance competition in the mobile market.

However, the respondent points out that the MCA must outline the types of possible discrimination it may be referring to and demands that the MCA elaborates on this point further for the clarity of all stakeholders in the market.

The MCA considers it necessary to impose an obligation of non-discrimination on both Vodafone and Go Mobile to avoid a situation whereby an SMP operator would have the ability to exploit its market power in order to discriminate when providing termination services to other operators. The obligation of non-discrimination would allow the MCA to intervene in case of any discriminatory behaviour that could have a material adverse effect on competition.

In view of the request made by the said respondent to outline the types of possible discrimination, the MCA notes that it has identified four types of potential discriminatory behaviour as follows:

Type A – MNOs discriminating between other MNOs & FNOs

Type B – MNOs discriminating between FNOs

Type C – MNOs discriminating between other MNOs; or

Type D – MNOs discriminating between themselves and other MNOs &/or FNOs

The obligation of non-discrimination as laid down in law under Regulation 19 of the ECNSR is not limited to a particular form of non-discrimination or a particular behaviour, but relates to any discriminatory behaviour in relation to interconnection and, or access. The MCA would therefore consider each form of discriminatory behaviour listed above as in breach of the obligation of non-discrimination.

The MCA ultimately believes that the non-discriminatory obligation is an effective and proportionate remedy to prevent imbalances in the competitive position between FNOs and MNOs or between MNOs.

D. The transparency obligation: consultative input & MCA decision

One respondent argues that the transparency obligation proposed by the MCA contains provisions - in particular the requirement to publish a 'reference interconnection offer' (RIO) - which would add to the regulatory burden on MNOs. The said respondent suggests that a transparency obligation is not necessary in case a price control remedy is mandated, adding that it does not contribute by itself or in combination with other remedies to addressing the perceived competition problems in the market.

The proposed transparency obligation is merely considered as an extension to existing obligations with the same respondent claiming that it imposes costs without providing commensurate consumer benefits. The respondent also asks the MCA to exclude the transparency obligation from its regulatory proposals.

Regulation 18 of the ECNSR authorises the MCA to impose the obligation of transparency on SMP operators. The MCA believes that it is justified to mandate this obligation to ensure that MNOs deliver services of equivalent quality to other operators. Contrary to what respondents claim, the transparency obligation will not impose an undue burden on operators but would rather serve various purposes, including that of supporting other regulatory remedies such as the obligation of non-discrimination.

The MCA considers the transparency obligation as a way to ensure visibility with respect to the terms and conditions of services being offered by MNOs. The imposition of the transparency obligation would ensure that operators have sufficient information and clear processes to which they would not otherwise have access. For example, the transparency obligation would assist market entry by helping MNOs comply with elements of the obligation of non-discrimination and in so doing speed up negotiation. The said obligation would also require operators to prepare and publish specified information, such as accounting information, technical specifications, network characteristics and prices. This would deter anticompetitive behaviour from SMP operators by ensuring that they do not discriminate with other operators and their users.

The MCA confirms the imposition of the transparency obligation with a provision requiring MNOs to publish information with respect to a reference interconnection offer (RIO). However, the RIO provision will neither extend the application of the transparency obligation nor request operators to provide information exceeding the current level of detail being provided. This notwithstanding, the MCA maintains the right to establish or alter the degree of the obligation of publication of information in the reference offer.

Overall, the MCA considers the transparency obligation as a necessary measure to monitor any anti-competitive behaviour and to ensure that MNOs comply with elements of the obligation of non-discrimination.

E. Accounting separation: consultative input & MCA decision

In its response to consultation, one of the respondents argues that, in the presence of price control, the obligation of accounting separation is unnecessary because the prices of termination services alone are enough to determine whether non-discrimination obligations are being upheld.

The said respondent underlines that accounting separation amounts to an over specification of the regulatory requirements on operators, without any tangible benefits to any stakeholder. In addition, the respondent does not believe that accounting separation is required to support other remedies proposed by the MCA.

The MCA disagrees with the views expressed above. The obligation of accounting separation ensures that operators with SMP keep separate accounts to reflect, as closely as possible, the performance of separate business activities that they operate. In this way, the MCA would ensure that the costs allocated by an operator to an individual mobile service are the actual costs being incurred to provide the respective service.

The MCA is aware that MNOs with SMP are able to cross-subsidise between services through an internal transfer pricing mechanism which is distorted in favour of their own retail operations to the detriment of existing or potential competitors, and to the disadvantage of end users purchasing other services. However, accounting separation would preclude cross-subsidisation and would thereby avoid any inefficient pricing strategies that favour discriminatory behaviour. Accounting separation ultimately provides improved transparency in the accounting arrangements of operators and therefore encourages non-discrimination.

In conclusion, the MCA believes that the obligation of accounting separation in conjunction with that of price control ensures that wholesale prices are set in a transparent and non-discriminatory manner.

F. Price control and cost accounting: consultative input & MCA decision

Go Mobile claims that MCA's imposition of a price control obligation and a cost accounting obligation is not justified. This respondent argues that the current approach to price control and the current level of termination charges led to higher efficiency in the market, with obvious positive effects on competition and consumer welfare.

Go Mobile specifies that the benchmarking approach to price control as proposed by the MCA should be implemented with extreme caution to ensure that it works well in practice, both in terms of low costs of compliance for operators and enhanced consumer welfare.

Another argument brought forward by Go Mobile suggests that, for the time being, the proposed price control mechanism should only serve to establish the 'projected applicable target rate for a new three year glide path'. In Go Mobile's view, it is still early for the MCA to peg the applicable MTR exclusively on the yearly percentage change in the EU27 average, given that each EU member state applies different methodologies to establish MTRs. This respondent concludes that, in the current circumstances, a three-year glide path would be the best option for regulating MTRs.

Go Mobile also urges the MCA to be mindful of the incentive for operators to invest when tackling the pricing of MTRs. In addition, it urges the MCA to take into account the differences in costs for fixed and mobile operators when terminating calls on their network.

In its response to consultation, Vodafone expresses its support towards a glide path approach to price control, arguing that this is beneficial to operators and other stakeholders alike. The said respondent refers to the fact that the glide path has been instrumental in reaching a symmetrical termination rate in the local mobile market. In view of this, Vodafone augurs that a symmetrical rate is maintained in the coming years.

Albeit its positive stance *vis-a-vis* a glide path approach to price control, Vodafone still upholds MCA's proposal to peg local termination rates with the EU27 average reduction in MTRs. Vodafone's only concern with the proposed approach to price control is that the EU27 index may fall drastically within the next two to three years. Vodafone believes that, if this happens, the MCA should carry out a detailed assessment at a national level before mandating adjustments on local MTRs.

Melita Cable agrees with MCA's proposal to peg local regulated MTRs to the average yearly changes in the EU27 average. This respondent describes MCA's proposed approach to price control as a sensible, practical, and proportionate proposal. Melita Cable argues that this proposal 'should ensure that consumers will avail of ongoing reductions in the retail cost of calling mobiles while mobile operators are fully remunerated for all efficiently-incurred costs relating to the provision of wholesale voice termination services'. It also adds that MCA's proposal for a cost accounting obligation should serve as a 'useful cross-checking mechanism to ensure that call termination services provided by the SMP operators are priced on a cost-oriented basis'.

As already outlined in the Consultation Document, the MCA believes that the price control and cost accounting obligations are essential to bring MTRs down to the efficient level. Such regulatory intervention is necessary to reduce MTRs and to avoid the possibility that any SMP operator can abuse of its dominant position by setting excessive MTRs so as to maximise profits. The MCA therefore considers the said obligations as both proportionate

and justified to remedy the identified competition problems in mobile termination markets (MTMs).

The Consultation Document outlines three different ways of approaching the price control obligation. These include the glide path approach, the cost model approach, and benchmarking.

The MCA believes that, technically, the best approach for arriving at an efficient MTR or target rate is to make use of cost models designed on the specifications of an efficient mobile operator. In support of cost models, the MCA would then impose a cost accounting obligation to collect cost information necessary to calculate and impose cost based MTRs.

However, the MCA cannot at this particular point in time implement a cost model approach to the price control obligation. Establishing cost oriented MTRs is not a quick process and requires substantial commitment from both operators and the MCA. The process is resource intensive, involving a lengthy consultation exercise and an intensive data gathering and modelling process. This process would therefore not allow the MCA to determine a cost efficient rate in time to continue with its regulation of termination rates as from 2009. The MCA is currently assessing the resources and requirements needed for the construction of a cost model taking also into consideration the requirements set in the new Commission's recommendation on termination rates which feature the use of a LRIC model.

In the absence of a cost model, a 'target rate' to be achieved at the end of the glide path cannot be determined a priori. Consequently, without a target rate, a glide path approach to price control as requested by MNOs is not possible.

With the cost model and glide path options excluded, the MCA had to resort to the use of benchmarking - a pegging mechanism linked to an EU27 index taking into account the prices and price developments in other countries - as an alternative approach to price control. The MCA underlines that the benchmarking option provides for a balanced approach to regulation, and would ensure lower termination rates whilst at the same time ensuring reasonable regulatory burdens on MNOs.

The MCA also notes that the benchmarking approach to price control safeguards MNOs against drastic changes in the average reduction of the EU27 MTR index, as argued by one of the respondents. In fact, the MCA is setting a maximum and minimum cap of +/- 10 per cent variation in the local termination rate, above that of the EU average rate, to limit any significant unexpected shocks in the EU27 average. This would ensure that local MNOs would be able to charge a reasonable termination rate. In the case where the change in the EU average is higher/lower than the cap, MNOs would be required to change their rates based on the maximum/minimum of the cap - which is equivalent to 10 per cent.

As a further precautionary measure, the MCA is imposing a cost accounting obligation to allow the MCA to monitor and cross-check, on an ongoing basis, costs incurred by MNOs as opposed to termination charges being applied. The MCA would then be able to ensure that MTRs imposed do not place an unreasonable burden on MNOs, and that any claims made by MNOs regarding unjustified termination rates following changes in the EU average MTR could be substantiated with actual accounting information.

The termination rate that local MNOs will be using shall be based on the official data contained in the European Commission's implementation report published on a yearly basis during the first quarter of the year. The benchmarking exercise will start as at 1st June 2009 and continuing till the 1st June 2011, and will be updated on a yearly basis. The MCA will give 30 day advance notice on the applicable termination rate to be applied by MNOs. Until a new termination rate is published by the MCA, MNOs having an SMP

status shall continue to use the termination rate applicable at the time. The MCA will carry out a fresh review of the termination markets before the 1st June 2011.

The decision to utilise a benchmarking approach to the setting of mobile termination rates is being taken without prejudice to developments that may occur during the two year timeframe of this review, particularly in view of the EU Commission's recent work on the harmonisation of termination rates across the EU. The MCA believes that, in the current circumstances, benchmarking is the most practical and least burdensome approach to adjust and maintain termination rates in line with efficient levels. The MCA will keep a close watch on the developments of EU termination rates and will update and/or consult with MNOs prior to effecting changes to the proposed benchmarking exercise featuring in this decision. The MCA reserves the right to amend the price control obligation if need be following consultation with all interested parties.

G. Regulatory matters with respect to new entrants in the mobile termination market

Go Mobile and Vodafone argue that the MCA should apply the same regulatory obligations across all operators, including new market entrants. The said respondents state that they fail to understand why the MCA did not extend its regulatory regime to the third mobile operator (3GT Communications), which is expected to launch its services within the timeframe of this review. One respondent also claims that the MCA is providing assistance to the new market entrant at the expense of existent operators, market competition, and consumer welfare.

Both Vodafone and Go Mobile underline that any obligation imposed on a new service provider must be equivalent in its scope and extent to those imposed on the existent market players.

The MCA will consider imposing regulatory obligations on new market entrants once they start operating in the market and only after having carried out a thorough review of the market at the time of entry. The MCA assures respondents that it will continuously monitor market developments, and that it will revise its position following significant changes in the market.

4.7 EU Commission comments

Pursuant to Article 7(3) of the Framework Directive, the EU Commission communicated its views[10] with respect to the second review of the market for voice call termination on individual mobile networks in Malta as notified by the MCA.

The EU Commission comments on the price control mechanism to be adopted by the MCA and need for a coherent European approach.

It recalls that '*although the Regulatory Framework does not exclude a price control mechanism based on a comparison with other countries, such mechanism should serve to promote efficiency and sustainable competition and maximise consumer benefits'.* It also underlines that '*termination rates should be set at a symmetric level corresponding to the costs of an efficient operator*'.

[10] Pursuant to Point 12 of Recommendation 2003/561/EC[10], the Commission will publish related document on its website.

In this regard, the Commission points out that the objective criteria and justifications for the proposed price control mechanism should be clearly set, especially in view of '*differences between conditions prevailing on the relevant market(s) in the countries compared and its home market*'.

In view of the above, the MCA emphasises that, prior to deciding which index to use for benchmarking, it has carried out an analysis of alternative indices based on data contained in the 13th Progress Report on the Single European Electronic Communications Market 2007, and data from ERG. The MCA has considered four alternative indices, namely:

1. average MTRs for the EU27;

2. average MTRs for the EU27 excluding outliers (5 lowest and 5 highest);

3. MTRs of EU countries having a cost model (rate emerging from model not the actual MTR being applied since the latter is not available); and

4. an index of the lowest termination rate applied in each of the EU27 countries.

The MCA found that a mechanism which benchmarks the reduction in local MTRs against the reduction in the average MTR for EU27 countries would guarantee the more realistic decreases in local MTRs over the next two years. The rationale is that the largest reductions in the average MTRs would be expected from the index which at present has the highest average rate. Based on the assumption that MTRs will fall mostly in countries where they have high termination, choosing the EU27 index will be the best option in terms of promoting efficiency and consumer welfare.

The MCA ultimately believes that, in the current circumstances, such mechanism is the most practical and least burdensome approach to adjust and maintain symmetric termination rates in line with efficient levels. In this regard the MCA notes has also analysed other price control options such as cost models and glide path, which however were not found to be a suitable option.

The Commission also invites the MCA to '*reconsider the imposition of the 10% cap', whilst underlining the need for the MCA to 'review its analysis as soon as a common approach has been established*[11] *(at a European level) in order to set efficient rates for all MNOs as soon as possible'*.

The MCA believes that the cap of +/-10% is necessary to ensure that in the event of a sharp drop of the average EU27 MTR within one particular year, local mobile operators would be in a better position to gradually absorb the shock over a period of time. The MCA believes that given that the current average MTR in Malta is already below the EU27 average, and is also symmetric for all mobile operators, the 10% cap is a reasonable and justified measure.

In conclusion, the MCA reiterates that the decision to utilise the proposed price control mechanism to the setting of MTRs is being taken without prejudice to developments that may occur during the two year timeframe of this review, particularly in view of the EU Commission's recent work on the harmonisation of termination rates across the EU.

[11] Commission comments are 'in view of the work currently undertaken at European level to arrive at a coherent cost accounting method for mobile termination'.

The MCA will keep a close watch on the developments of EU termination rates and reserves the right to amend the price control obligation if need be following consultation with all interested parties.

The MCA has taken all views into consideration and believes that the remedies it has proposed are appropriate and justified to deal with the potential competition problems it has identified in the market for wholesale mobile voice call termination.

In accordance with the ECNSR and the principle of proportionality, the MCA deems it necessary to impose obligations on both Vodafone and Go Mobile as listed below.

Decision 3

The access obligation

In accordance with Regulation 21 of the ECNSR, the MCA directs Vodafone and Go Mobile to maintain the current access obligation for the provision of termination services on their respective networks, not to withdraw access to facilities already granted, to interconnect networks or network facilities and publish a cost oriented reference interconnection offer (RIO). Moreover, such MNOs should give third parties access to specified network elements and/or facilities when reasonable requests for such access are made.

Operators must negotiate in good faith with undertakings requesting access for termination. Access to the network for termination services should be provided together with any services, facilities, or arrangements which are necessary for the provision of such access. The said MNOs shall ensure that all reasonable requests for access for the purpose of termination services are expedited in a fair, reasonable, and timely manner.

Decision 4

The non-discrimination obligation

In accordance with Regulation 19 of the ECNSR, the MCA directs Vodafone and Go Mobile to apply equivalent conditions in similar circumstances to other undertakings seeking access for termination services and providing equivalent services. Any differences in treatment must be justified by reference to objective considerations.

Decision 5

The transparency obligation

In accordance with Regulation 18 of the ECNSR, the MCA directs Vodafone and Go Mobile to publish a reference interconnection offer (RIO), which shall be sufficiently unbundled so as to ensure that alternative operators 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.

Moreover, the reference offer shall include pricing, and standard terms and conditions as directed by the MCA. In so doing, the MCA reserves the right to specify further the precise information to be made available, the level of detail required, and the manner of publication of this information.

Vodafone and Go Mobile are also directed to make public accounting information, technical specifications, network characteristics, terms and conditions for supply and use,

and prices as required by the MCA.

Decision 6

Accounting separation

The MCA directs Vodafone and Go Mobile to continue to abide by their accounting separation obligation as exemplified in the MCA decision entitled 'Accounting Separation and Publication of Financial Information for Telecommunications Operators – Report on Consultation and Decision'[12], published in October 2002.

This notwithstanding, the MCA reserves the right to amend the current obligation in accordance with its powers at law, in particular Regulation 20 of the ECNSR, and the principles of reasonableness and proportionality.

Decision 7

The Price Control and Cost Accounting

In accordance with Regulation 22 of the ECNSR, Vodafone and Go Mobile shall abide by the obligations of cost accounting as imposed by the decisions in force at the time of publication of this decision[13] .

Vodafone and Go Mobile shall also abide by the price control obligation, implemented by means of this decision on the introduction of a mechanism which benchmarks the reduction in local MTRs against the reduction in the average MTR for the EU27 countries.

The first adjusted MTR will be issued in March 2009, to be applied as from 1st June 2009, and a new adjusted rate in March 2010, to be applied as from 1st June 2010. During 2010 the MCA will then carry out a fresh review of mobile termination markets.

The MCA is also setting a maximum and minimum cap of +/-10% variation in the local termination rate to limit any significant unexpected shocks in the average yearly percentage change in the EU27 MTR.

The MCA reserves the right to amend all of the controls described above in accordance with its powers at law and after consulting with all interested parties on the proposed changes.

[12] Refer to Footnote 7 above.

[13] Refer to Footnote 8 above.

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Appendix

MINISTERU TAL-FINANZI, L-EKONOMIJA U L-INVESTIMENT

DIVIŻJONI TAL-KONSUMATUR U TAL-KOMPETIZZJONI

Direttorat tal-Kompetizzjoni

MALTA

MINISTRY OF FINANCE, THE ECONOMY AND INVESTMENT

CONSUMER AND COMPETITION DIVISION

Competition Directorate

28 April, 2008

The Chairman
Malta Communications Authority

Dear Chairman,

The Office for Fair Competition (OFC) has been asked to provide its opinion in respect of the outcome of the Malta Communications Authority's (MCA) review and market analysis of the Wholesale Voice Call Termination on Individual Mobile Networks market.

The OFC opines that when analysing the market under review the MCA applied principles that are consistent with best practices used in defining relevant markets in competition analysis. The OFC believes it is reasonable to accept MCA's assessment of the Wholesale Voice Call Termination on Individual Mobile Networks market in Malta, at least for the period under review. Nonetheless, MCA should continue to monitor market developments in this regard.

We would like to point out that our views are being submitted in the context of the specific provisions of the SMP guidelines relating to the relationship between markets defined for the purpose of ex-ante regulation vis-à-vis competition law enforcement. The OFC reserves the right to re-examine any or all of the issues underlying these MCA recommendations in the light of facts and evidence that may arise in specific future cases before it.

Yours sincerely,

Dr. Mireille Vella
DG CCD

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