



EUROPEAN COMMISSION

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Malta Communications Authority
(MCA)
Valletta Waterfront — Pinto Wharf
FRN 1913 Valletta, Malta

For the attention of:
Mr Philip Micallef
Executive Chairman

Fax: +356 21 336 846

Dear Mr Micallef,

Subject: Commission Decision concerning Case MT/2010/1349: Wholesale access and call origination on public mobile telephone networks in Malta

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

I. PROCEDURE

On 5 July 2012, the Commission registered a notification from the Maltese regulatory authority, Malta Communications Authority (MCA),¹ concerning the market for wholesale access and call origination on public mobile telephone networks² in Malta.

The national consultation³ ran from 21 May 2012 to 22 June 2012.

On 12 July 2012, a request for information⁴ was sent to MCA and a response was received on 16 July 2012.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities

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

² Corresponding to market 15 in Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 114, 8.5.2003, p. 45.

³ In accordance with Article 6 of the Framework Directive.

⁴ In accordance with Article 5(2) of the Framework Directive.

(NRAs), the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Background

The previous review of this market was notified to and assessed by the Commission under case MT/2006/0443. MCA found that Vodafone Malta Ltd (Vodafone) and MobIsle Communications Ltd ('go mobile') held a position of collective dominance on the market for wholesale access and call origination on public mobile telephone networks in Malta. MCA imposed obligations concerning access, non-discrimination, transparency, cost accounting, price control and accounting separation on the two mobile network operators (MNOs).

The Commission invited MCA to better substantiate in its final measure that the conditions of joint dominance were fulfilled and to monitor the development of competitive conditions, in particular with regard to the expected entry of a third operator in the market.

II.2. Market definition

At retail level, MCA identifies a market for access to mobile services, voice calls (including international roaming calls) and SMS services, provided to both business and residential customers via postpaid and prepaid services. All such services provided over 2G and/or 3G technologies are included in the same relevant retail market. At wholesale level, MCA defines a relevant wholesale market consisting of the supply of access and call origination services over the network of each mobile network, including self-supplied access and call origination. The relevant market includes all MNOs in Malta (i.e. Vodafone, GO, and Melita). MCA defines the relevant geographic market as national.

II.3. The three criteria test

As the market for wholesale access and call origination on public mobile telephone networks is no longer listed in the Recommendation on Relevant Markets,⁵ MCA has carried out the three criteria test⁶ with regard to the notified market.

With regard to the first criterion, MCA indicates that a new entrant (Melita) entered the market in 2009 after having rolled out its own nationwide 3G mobile network. By the beginning of 2012, Melita had achieved a relatively high market penetration. In addition, two mobile virtual network operators (MVNOs) have entered the market and provide services on the basis of a commercial arrangement with GO and Vodafone, i.e. without

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

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

relying on the regulated access regime.⁷ In addition, spectrum bands are still available. Therefore, in MCA's view, the entry barriers have been overcome since the last market review.

With regard to the second criterion, MCA's analysis shows that Vodafone and GO's market position is sufficiently constrained by the new entrant Melita⁸ and that the market has become more competitive.

Moreover, with regard to the third criterion, MCA is of the view that the Maltese Competition Authority can effectively remedy competition problems occurring in that market.

MCA concludes that the three criteria test is not met and therefore that the market does not warrant *ex ante* regulation.

II.4. Finding of significant market power

Despite the finding that the market no longer warrants *ex ante* regulation, MCA has carried out an assessment of significant market power (SMP). MCA finds that neither single dominance nor joint dominance can be established. Vodafone's market shares have recently remained stable, GO's shares have been decreasing sharply and Melita's shares have rapidly increased.⁹ As for collective dominance, since the entry of Melita as the third operator, the incumbent operators (Vodafone and GO) no longer have an incentive to coordinate practices. The conditions for successful tacit coordination no longer exist, i.e. there are no homogenous products (different products and tariff plans are being offered). The market shares of the three operators are not converging. Although the market remains concentrated, switching between the three operators is easy, retail prices are falling, and there is no credible retaliation mechanism.

II.5. Regulatory remedies

Since the market is found to be competitive, MCA proposes to withdraw all existing regulatory measures concerning GO and Vodafone. MCA will monitor market developments on an ongoing basis.

III. NO COMMENTS

The Commission has examined the notification and the additional information provided by MCA and has no comments.¹⁰

⁷ In 2008 Vodafone granted access to Redtouch Fone and Bay Mobile (the latter ceased its commercial activity in Q3 2009). In 2010, PING and YOM started operating on GO's and Vodafone's networks, respectively.

⁸ MCA notes that Vodafone and GO have adopted different strategies in order to compete. Mobile porting between MNOs has been quite steady and consistent in recent years and is fostered by the near absence of switching costs, since 80% of subscribers opt for pre-paid services. Retail tariffs for all operators have been falling over the past three years. The overall average price for domestic minutes has fallen by 56% between Q1 2009 (when Melita entered the market) and Q1 2012. The three operators are now proposing very different product bundles.

⁹ In less than three years, Melita has captured around 11% of market share in terms of subscriptions and around 24% in terms of volume (originating minutes). GO's market share in terms of subscriptions has been decreasing (from around 47% in Q4 2006 to around 37% in Q1 2012). Vodafone's has also decreased over the same period and is now around 50%. The MVNOs' market share remains below 2%.

¹⁰ In accordance with Article 7(3) of the Framework Directive.

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

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

Pursuant to Point 15 of Recommendation 2008/850/EC¹¹ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission¹² within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.¹³ You should give reasons for any such request.

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

¹¹ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

¹² Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2298 87 82.

¹³ The Commission may inform the public of the result of its assessment before the end of this three-day period.