Submission to 'Notification of Concentration' published by the MCCAA in the issue of the Government Gazette of the 6th June 2017

Date: 12th June 2017

Subject: A preliminary assessment of the impact of a potential concentration involving Vodafone Malta Ltd. and Apax Partners Midmarket SAS on the Maltese electronic communications sector

---

The Malta Communications Authority (hereafter referred to as 'the MCA') is submitting its observations to Office for Competition within the Malta Competition and Consumer Affairs Authority (hereafter referred to as the 'MCCAA') on the notified concentration by Apax Partners Midmarket SAS and Vodafone Malta Limited, as outlined by the aforesaid Office for Competition in the 'Notification of Concentration' which was published in the issue of the Government Gazette of the 6th June 2017.

The purpose of this submission is to highlight upon the potential impact on competition resulting from the above-mentioned concentration, this notwithstanding that the MCA has not been provided with full and proper visibility as to the nature of the concentration being notified and the timelines that are being envisaged for the actual materialisation of the concentration.

For all intents and purposes, irrespective of whether the concentration takes the form of a merger, an acquisition, or amalgamation of shareholding or any other form of concentration, the MCA considers that any ex post or ex ante assessment should take into consideration the effects on competition and consumer welfare. Thus the MCA considers that the preliminary observations arising from this submission are of substantial importance irrespective of the form of concentration that may arise. There are also other aspects that the MCA deems necessary to elaborate upon, namely matters concerning spectrum assignment and management. These are highlighted in section 3 of this document.

1. The potential effects of the proposed concentration on competition dynamics in local electronic communications (ECS) markets

A predominant aspect of the Maltese electronic communications sector over the last 24 months has been the occurrence of acquisitions concerning the two quadruple play largest service providers currently operating in Malta namely Melita Limited and GO plc.

The first move in this direction came in July 2015, when the majority shareholder of GO plc, Emirates International Telecommunications Malta Limited (EITML), announced its intention to seek to dispose of its shareholding in the company in the short term. Meanwhile, in December 2015, Melita p.l.c. announced that its shareholders, led by independent private equity group GMT Communications

Partners[1], had sold Melita p.l.c. to Apax Partners (France) and Fortino Capital (Belgium). This acquisition was finalised in February 2016. Six months down the line, Tunisie Telecom announced the successful conclusion of the Voluntary Public Offer made by its fully owned subsidiary TT ML Limited for shares in GO p.l.c., thus acquiring 65.4% of GO's total issued share capital.

	2000	2006/2007	2015
GO plc	Legacy owners	Acquisition	Acquisition
	Maltese Government @ 60% and general public @ 40%	Tecom Investments LZ LLC @ 60%	Tunisie Telecom @ 60%
Melita plc	Legacy Owners	Acquisition	Acquisition
	UPC and the Gasan Group	GMT Communications Partners	Apax Partners & Fortino Capital
Vodafone (Malta)	GO plc. owned 20% stake renounced in 2002	No change in ownership	
	Vodafone / GO	Vodafone	Vodafone

Table 1: Changes in ownership of entities supplying local electronic communications markets

The above transactions were limited to relatively straightforward transfers in ownership of the respective undertakings, which in all other material respects continued operating as independent service providers. From an ex ante regulatory perspective, this 'wave' of acquisitions did not dent the pro-competitive dimension that characterized local telecoms markets in recent years. In fact, throughout this period, the MCA did carry out several market reviews and deregulated the provision of retail fixed access and wholesale call origination due to improved competition dynamics. In the first quarter of 2017, the MCA also deregulated the retail market for the provision of high-quality access and connectivity services offered via leased lines. The MCA did however maintain regulation at wholesale level when it comes to fixed and mobile termination charges and access to network infrastructure (LLU and VULA).

The latest development that a Notification of Concentration between Apax Partners Midmarket SAS (Paris, France), which own Melita Ltd together with Fortino Capital, and Vodafone Malta Ltd. has been submitted to the MCCAA underlines the ongoing drive towards market consolidation in local electronic communications markets. It is noted that such a transaction would be unlike the previous acquisitions of GO and Melita by new owners.

In its notification of concentration the MCCAA states that '*the nature of the concentration is an indirect acquisition by Apax Partners MidMarket, by virtue of a Securityholders agreement, of sole control of the whole Vodafone Malta Limited*'. For the MCA, the materialization of such an acquisition would give rise to a new mega-entity, bringing together two long-established operators combining their resources to compete directly with GO. Evidently, such a transaction would translate into higher market concentration ratios, particularly in the mobile market as it entails the

[1] GMT Communications Partners had acquired Melita p.l.c. (then, Melita Cable p.l.c.) in 2007; later that year, MC Venture Partners, Blackrock Communications and the Gasan Group had joined as investors.

combination of two full-fledged mobile network operators (MNOs, meaning two operators that already own national physical infrastructure for the provision of mobile communications services), thus reducing the number of service providers in the respective market.

Another notable feature of the transaction is that it combines the activities of a fixed network operator (Melita) and an operator owning a mobile network (Vodafone Malta). Such a fixed-to-mobile concentration transaction *prima facie* appears to be driven by the prospect of convergence, with the general understanding being that Vodafone Malta may now be actively pursuing a share in the quad play strategy that has characterized local electronic communications markets in recent years.

This could set the backdrop for an interesting development in the competition dynamics of local telecoms markets, given that local electronic communications markets are oligopolistic in nature. It must be noted that the existence of an oligopoly is not, in itself, illegal, given that rivalry between undertakings may be more active than in the case of perfect competition. Nevertheless, the envisaged market consolidation, irrespective of whether this happens at this juncture or at a later stage, would result in a new duopolistic scenario in Malta that may not be conducive to higher competition levels in the medium to long term. There are three main areas from a competition standpoint that would require particular attention following an acquisition such as that communicated in the aforesaid notification[2].

i. The impact on the structure of ECS markets: from an oligopoly to a duopoly

The above-mentioned concentration would effectively qualify as a fixed-mobile transaction as it would combine two telecoms operators with different business focuses, mainly an MNO (in the case of Vodafone) offering some other ECS services on a limited scale and a fully-fledged quadruple play business (in the case of Melita)[3]. It is reasonable to assume that the rationale behind this transaction is the '*complementarity of the merging parties' assets*', which in turn '*may also give rise to certain horizontal overlaps concerning the merging parties' fixed or mobile telecom activities*'[4].

Effectively, the concentration would result in a vertically and horizontally integrated operator offering all electronic communications services in Malta in direct competition to GO. Whether such a market structure would lead to the creation of abusive market dominance (in the form of co-ordination in a duopolistic market set-up) remains to be seen and should be subject to detailed studies carried out both from ex ante and ex post perspectives.

[2] These three main areas are also covered in the Competition Merger Brief 3/2016, which is available on the following link: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwismcjg_bfUAhXIvRQKHUJvAl0QFggjMAA&url=http%3A%2F%2Fec.europa.eu%2Fcompetition%2Fpublications%2Fcmb%2F2016%2Fkdal16003enn.pdf&usg=AFQjCNGSZyRJZZneeCFslli6fw5fZ8y6Pw&sig2=wrncwcSdl-y3T8U4qqwFrw

[3] GO plc and Melita plc are quad-play operators offering all types of electronic communications services to customers, whilst Vodafone is mainly a mobile telephony operator. Vodafone however also offers fixed telephony and fixed broadband services on a very limited scale mainly to business users using a number of alternative technologies such as wireless broadband access and Microwave links.

[4] Reference: https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0ahUKEwij4eTpgN3RAhUJvBQKHZysBDoQFggZMAA&url=http%3A%2F%2Fec.europa.eu%2Fcompetition%2Fpublications%2Fcmb%2F2016%2Fkdal16003enn.pdf&usg=AFQjCNGSZyRJZZneeCFslli6fw5fZ8y6Pw&sig2=F1i5lXAvQkiv9GopsP-24A&bvm=bv.145063293,d.bGs

Certainly, however, a Melita-Vodafone concentration would translate into the elimination of an important competitive constraint that these two merging parties previously exerted upon each other and separately on GO.

ii. <u>The impact on the level of competition in the mobile market</u>

One glaring concern for the mobile market that would result from the notified concentration is the de facto loss of one out of only three mobile network operators (MNOs) currently operating in Malta.

The materialisation of the notified concentration would lead to the creation of a clear market leader in terms of the subscriber base, with the 'new' entity having a market share of around 60%[5], compared to GO's 38%. Whilst a 60% market share would be substantial, it would still fall within the 65-35% range observed for other telecoms markets, such as in the case of fixed telephony, where GO currently has a market share of almost 65%. This is not to say that a high market share above 50% automatically signals competition problems (or SMP), however this variable remains an important benchmark with which to assess how competition develops over time. For example, there have been instances where the MCA has deregulated markets, even where one market player had a market share exceeding the 50% threshold, given the observed long-term market trends, such as a consistent decline in market share alongside a reduction in prices. An example of such deregulation implemented by the MCA concerns the retail fixed access market where, notwithstanding GO's 64% market share as outlined in the table below, the market was deemed competitive based on findings from the competition assessment.

Market shares (end of 2016)	Fixed telephony	Mobile telephony	Pay TV	Fixed broadband
	✓	✓	✓	✓
GO	64.8%	37.2%	48.2%	49.7%
	✓	✓	✓	✓
Merged entity	34.8%	61.1%	51.8%	49.9%
	✓	✓	✓	✓
Melita	34.0%	17.0%	51.8%	47.2%
	✓	✓	X	✓
Vodafone	0.8%	44.1%	-	2.7%

Table 2: Market shares by operator in different ECS markets in Malta[6]

Nevertheless, it is widely acknowledged that new market entry and a larger presence of market players is beneficial to competition. For example, back in 2006, Melita's entry into the mobile market immediately resulted in increased competitive pressure on the two largest service providers active on the market at the time, namely Vodafone Malta and GO. The swift process for number portability enabled thousands of customers to switch to Melita. Others opted to have a second connection with

[5] The market shares of local mobile telephony service providers as at the end of 2016 were as follows: Vodafone (Malta) at 44.1%; GO at 37.2%; Melita at 17.0% and Redtouchfone at 1.7%. It is also noted that the discrepancy from the 100% total in other ECS markets is attributed to the presence of smaller market players that account for the remaining share.

[6] In the case of fixed telephony, mobile telephony and fixed broadband, the market shares of GO, Melita and Vodafone do not add up to 100%. The remaining share is accounted for by smaller operators active in the relevant markets.

Melita whilst keeping their original GO or Vodafone connection. The relatively easy switching process enabled Melita to build market share, which stood at 17% at the end of 2016.

It is also relevant to underline that Melita's mobile telephony offers brought about improved price dynamics, as reflected by the consistent declines recorded over the last few years in 'the per minute rate of domestic mobile communications' shown in Chart 1 below.

A look at the price developments of mobile telephony (voice and data) services in Malta in the period from 2005 to 2016 shows that although price declines were consistent throughout, the two years following the arrival of Melita witnessed increased dynamism in price movements. The MCA has already commented in this respect in its wholesale call origination market review (carried out in 2012), stating that:

"... *it immediately transpires that during the period 2006 to 2008 retail tariffs for GO and Vodafone were nearly identical and any movements in the average price over this period were relatively smooth. The MCA was therefore correct to conclude that both operators were coordinating practices to tacitly mute price competition. As of 2008 Q3 where Melita had already made public its intention to enter the market and launch its own network operated service retail tariffs started to fall considerably. Indeed the sheer threat of competition by a third network operator had moved the incumbent operators to lower their tariff plans and match the upcoming competition, while at the same time consolidate their market share and presence.*

Since Melita joined the mobile market in early 2009 the tariff rates it offered have been lower than any other operator and lower than the market average. At one point (2009 Q4) Vodafone had managed to match the average retail prices being offered by Melita but was soon undercut as the latter continued to reduce prices in an attempt to attract the largest possible number of new subscribers as well as customers willing to churn away from the incumbent operators. In response, Vodafone and GO followed suit in their own respective way, breaking down any coordination strategy that existed on muted price competition.

In light of this the MCA notes that Vodafone and GO today no longer offer identical retail tariff rates and while GO is priced above average, Vodafone's retail tariff is more or less at par with what is charged on average by the market...

...This trend in lower prices has also been reflected into lower returns registered by the incumbent MNOs..."

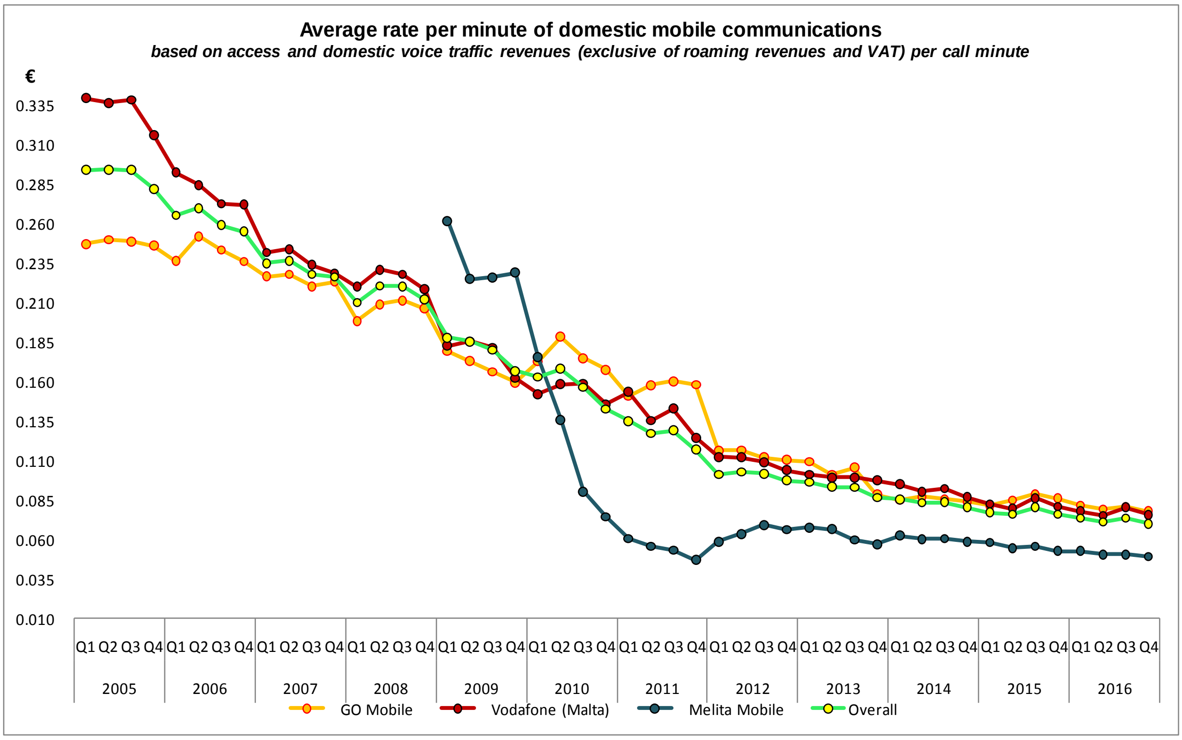

Chart 1: Average rate per minute of mobile voice communications – domestic calls

Thus the impact of Melita on the mobile retail market, as documented in the 2012 market analysis, has been substantial, particularly in the first few years following Melita's market entry, which saw a more dynamic downward decline in call rates to the benefit of consumers. Nevertheless, the decline in prices somewhat stabilised at a much slower rate from 2012 onwards, although it is clearly evident that Melita continues to offer call rates that are much lower than those offered by GO Mobile and Vodafone Malta. Given that the notified concentration may result in the loss of one of the MNOs involved in the transaction, possibly Melita, the dynamics of competition may change to such an extent as to give rise to concerns of a reduction of the competitive pressure previously exerted by the merging parties on each other, as well as the reduction of competitive pressure on the remaining competitors in the market, namely GO. The absence of a third MNO from the local mobile market would effectively translate into the elimination of an important competitive force that previously posed a direct price constraint on GO and Vodafone Malta. The 'dilution' of competition forces raises the risk of a halt in the decline of the per minute rate in mobile communications, or even a reversal in trends.

The potential pricing implications of the proposed concentration may also overspill into the provision of other mobile services, such as mobile data services. Whilst the MCA notes that usage of mobile data services has consistently increased over the last few years, no clear downward trend has as yet been observed in the pricing of such services.

It is amply clear from the above that the question in front of us is whether the loss of a market player as a result of the proposed concentration would translate into less choice for the consumer alongside higher prices. This is a particularly relevant consideration, given the recurring but not necessarily substantiated claim that retail mobile prices in Malta may have not gone down sufficiently over recent years, notwithstanding the presence of three market players. In this regard, it is worth recalling that, as a result of Melita's entry into the mobile market and given the manifestations of competition that resulted following this market entry, the MCA took a decision to roll back regulation from wholesale call origination market.

What happens to competition following a 3-to-2-player scenario following the above-mentioned concentration transaction remains to be seen. However, various studies show that mobile market consolidation in the form of mergers and/or acquisitions tends to have a significant impact on prices, with call rates adjusting upwards in the medium to long term following the transaction. For example, a study carried out by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) following the 4-to-3 merger by the MNOs Hutchison 3G (H3G) and Orange Austria (Orange) in early 2013 determines that:

"...*prices for an Austrian smartphone user have risen in the long run between around 50% (synthetic control group) and 90% (country-trend DiD method) on average. Short-term increases were also notable but were, with an average of about 24%, smaller. For traditional users, the average long-term price increase is between 22% and 31%. However, there was no short-time increase, i.e. within the first year after the merger, for the traditional user*."[7]

It was only a few years down the line, specifically after the arrival of new market players that mobile call rates started falling again. This is confirmed by a study carried out by the Austrian Competition Authority, Bundeswettbewerbsbehörde (BWB), on the same subject dealing with the above-mentioned merger. In this respect, BWB states that:

"*In the course of 2015, several MVNOs entered the market with aggressive offers and prices are now decreasing again. The fastest growing entrant, Ventocom, is a MVNO on the TMA network, rather than the H3G network. Ventocom has an distri-bution agreement with food retail discounter Hofer and offers tariffs under the brand Hofer Telecom (HoT). A good distribution network (and low wholesale prices per unit of use) seem to be crucial for successful market entry.*"[8]

Of additional note here is the EU Commission's warning that, based on research, a reduction of the number of mobile network operators from four to three in a national mobile market in the EU can lead to higher prices for consumers, without effectively translating into a higher investment per subscriber[9]. This warning has been crystallised in 2015 by the hardening stance by the Commission when it comes to consolidation in the mobile sector. For example, the proposed merger between Telenor and TeliaSonera was halted amid fears that reducing the number of operators could force higher prices on consumers in the Danish mobile market.

---

[7] Link to the study carried out by RTR:
https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj237qWj6nUAhXCXhoKHVwBCisQFgglMAA&url=https%3A%2F%2Fwww.rtr.at%2Fen%2Finf%2FAnalysis_merger_H3G_Orange%2FEx_post_analysis_merger_H3G_Orange_RTR.pdf&usg=AFQjCNEa3ga

[8] Link to the study carried out by BWB:
https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwic9aaboqnUAhXMvBQKHXYOCGcQFggjMAA&url=https%3A%2F%2Fwww.bwb.gv.at%2FDocuments%2FBWB2016-re-Ex-post%2520evaluation%2520of%2520the%2520mobile%2520telecommunications%

[9] Reference:
http://europa.eu/rapid/press-release_MEMO-16-1705_en.htm

Malta's situation in the mobile sector would therefore require even closer attention, as the number of operators in the mobile sector would effectively go down to two from the current three. True, it may be argued that mobile consolidation may result in efficiencies derived from, for example, the avoidance of duplication of network and non-network costs, which presumably would in turn be passed to consumers in terms of lower prices. Although such efficiencies and economies may indeed occur, whether such gains are passed on to the benefit of end-users or are retained by a consolidated entity is far from a foregone conclusion. Accordingly, whenever the EU Commission analysed mobile mergers across the EU on the basis of the Horizontal Merger Guidelines' criteria, it did not always accept arguments that efficiencies resulting from such transactions would trickle down to end-users. The latter argument may indeed require an element of re-dimensioning in the Maltese context, given that the argument for cost efficiencies carries more weight in view of the small market size. The crux of the argument here is to what extent the parties notifying the concentration could provide commitments that such efficiencies would offset the disadvantages of concentration and ultimately result in clear benefits to the consumer.

As to the role of mobile virtual network operators (MVNOs)[10] in Malta and their impact on competition, it is relevant to underline that local MVNOs are currently not in a position to compete on data packages and/or to innovate. Their main business rests on the provision of voice telephony services, which is wholly dependent on the wholesale access conditions offered by their host mobile network operator. Nevertheless, MVNOs still offer a substitutable voice telephony service to that provided by existing MNOs and hence serve to pose a direct price constraint on retail pricing in the mobile sector. It is of significance that, over the years, local MNOs have been amenable to offer access to their respective networks to third parties, such as has been the case with Redtouchfone, Valletta Football Club (VFC) Mobile, Bay Mobile and Ping[11]. This situation could change post concentration. Without effective access commitments posed on GO and the merged entity, the risk of unfavourable wholesale access conditions arising for MVNOs cannot be discounted. Also, from a practical standpoint, a two-market player scenario could lead to a weakening of the negotiating position of local MVNOs, as these would have less choice from where to purchase such wholesale access[12]. The retail attractiveness of commercial propositions by MVNOs can also be very difficult in a market where two large quad-play operators are soundly established.

iii. <u>The impact on the level of competition in other markets</u>

The notified concentration does not only concern mobile telephony services. Such a transaction effectively leads to the combination or amalgamation of several telecom services that are currently offered by Melita and Vodafone, in direct competition to each other and in direct competition to similar products offered by GO.

In the case of fixed broadband, for example, a concentration transaction between Melita and Vodafone Malta would consolidate the symmetric structure of this market, with both GO and the

[10] MVNOs do not own a network of their own but use that of MNOs (via wholesale access) to offer mobile telephony services at the retail level.

[11] Bay Mobile and Ping have ceased operations some years ago.

[12] There are currently no ex ante commitments on MNOs to negotiate and grant access to their respective networks to third parties. Hence the possibility of requesting a commitment by the merged entity to provide wholesale access to its network for up to a certain extent of its spare capacity to MVNOs, apart from the divestment of radio spectrum to the new entrant.

merged entity each having close to 50% market share. Also, the respective market would be losing an important source of current and potential competition. It is relevant to note that Vodafone Malta is offering a 30Mbps product that, notwithstanding its current availability and take-up, poses a limited retail competitive constraint on the pricing behaviour of GO and of Melita in the provision of fixed broadband. From a wholesale standpoint, the MCA has over the years mandated ex ante regulatory obligations on GO, such as Local Loop Unbundling (LLU) and Virtual Unbundled Local Access (VULA), specifically to open up access for operators, such as Vodafone, to enter the market. The Melita-Vodafone Malta concentration effectively 'eliminates' from the scene the biggest contender for market entry via these wholesale remedies, with the possibility of a third market player in the provision of fixed broadband services becoming even less likely to materialise in the near future.

On a wider level, the respective market share leads of GO and the merged entity in the provision of fixed telephony and mobile telephony respectively, combined with prevailing take-up and usage trends of fixed and mobile telephony services[13], may give rise to significant horizontal unilateral market effects that are detrimental to competition and ultimately retail customers. GO and the merged entity may end up using their market shares as a 'focal point' to slow down promotional efforts for stand-alone fixed broadband and pay TV products whilst having an incentive to leverage their respective 'leader' markets to tie customers on bundled subscriptions.

Another important consideration from a retail standpoint is the increasing number of end-users opting to purchase a bundle of electronic communications services, rather than stand-alone products. Indeed, Malta exhibits a very strong take-up of dual play and triple play bundles, combining different plans for fixed telephony, fixed broadband and pay TV.

Proportion subscriptions: stand-alone vs bundled (end of 2016)	Fixed telephony	Mobile telephony	Pay TV	Fixed broadband
Bundled	63.0%	10.3%	58.2%	78.7%
Stand-alone	37.0%	89.7%	41.8%	21.3%

Table 3: Proportion of subscriptions by type of product

The Melita-Vodafone Malta concentration is unlikely to influence this trend, especially as Vodafone Malta does not currently offer pay TV services, whilst its presence and product range in the fixed telephony and fixed broadband markets is rather limited. If anything, Vodafone Malta would 'gain' all of Melita's fixed telephony, fixed broadband and pay TV connections. However, bundling in a two-player market scenario further raises the possibility of horizontal unilateral effects, which would arise from the loss of competition between merging parties (the competitive constraint that the merging parties previously exerted upon each other), together with a potential reduction of competitive pressure on the other main competitor, in Malta's case GO.

[13] Specifically, the prevalence of mobile end-users (around 90%) buying their mobile telephony subscription on a stand-alone basis and the declining usage of fixed telephony.

2. An ex post – ex ante overlap

Overall, it is considered that a concentration transaction between Vodafone Malta and Melita would represent a departure from the competition dynamics that have been observed for local ECS markets over the last few years. One end result of the transition to NGANs can be the potential disruption of existing competitive balances and the re-emergence of SMP in existing or new markets. Additionally, possible new forms of dominance may also demand new types of remedy, these being either of an ex post and / or of an ex ante nature. To this effect, any future overlap of the two regulatory approaches cannot be excluded at this stage.

Based on the information gathered during the investigative stage, any competitive appraisal of the notified concentration would have to determine whether the relevant transaction effectively translates into lower prices for end-users and, ultimately, more investment.

The preliminary position of the MCA is that there are several downside risks to competition arising from the proposed concentration. However, the MCCAA is well-positioned to ensure that the sanctioning of the notified concentration would be tied to the implementation of ex post regulatory safeguards tailored to mitigate any potential competition shortcomings arising from the resultant concentration. These ex post regulatory safeguards would, in turn, be taken into account by the MCA in the course of its ex ante market reviews and the implementation of its ex ante regulatory approach.

3. Spectrum assignment and management

The MCA also has an interest in this proposed concentration in that it affects the assignment of new spectrum as well as the efficient distribution of already-assigned spectrum. As far as currently assigned spectrum is concerned it is envisaged that a detailed stock-take of spectrum in possession of any resultant merged entity, would take place subsequent to a positive ruling by the MCCAA in response to the notified concentration. The outcome would be to establish whether – should the concentration take place - the entity in question is in possession of more spectrum than it would require in order to be able to operate efficiently.

As regards spectrum assignment the MCA was in the process of assigning the 800MHz band. The proposed concentration between Vodafone Malta and Melita which was publicly revealed in mainstream national media some time ago, has led to the concurrent withdrawal of market interest from all applicants participating in the 800 MHz band assignment process, after the MCA clarified to the Vodafone Malta and Melita that it was no longer in a position to assign spectrum to both entities, given their intention to merge into one.

The 800 MHz spectrum, identified by the EU Commission for its importance in facilitating the deployment of 4G mobile networks, was harmonized for the provision of wireless broadband services across all EU member states in 2012 and subsequently made available by the Malta Communications Authority for prospective market interest in July 2014. Challenges in the international coordination for an alternative broadcasting frequency for general interest stations coupled with interference problems with Italy meant that the 800 MHz band was only fully cleared for use at the start of 2017.

This has not stopped Malta from delivering the economic and social benefits arising from the latest wireless broadband technologies including nation-wide 4G services. Even so, the bringing to market of the 800MHz band will serve to enhance the delivery of such services to a level of consistency and resiliency that can withstand increasing number of users for the foreseeable future.

4. Way Forward

The MCA considers that a proper assessment of the impact of the notified concentration on competition and consumer welfare necessitates that all interested parties share all the relevant information and detail pertaining to the transaction. The specifics of the nature of the concentration should be clear from the outset, with the envisaged timelines clearly notified. The preliminary position of the MCA is that there are downside risks to competition and consumer welfare and that the MCCAA is well placed to ask for guarantees (including documentation such as side-letters and similar) from the entities involved in the notified concentration in order to ensure that competition in the affected markets remains strong and that the end-users benefit from such competition. In this respect, the MCA also notes that the MCCAA's approach to the notified concentration will bear a direct impact on the MCA's work programme for the coming year.

As regards spectrum, the MCA remains committed to sound the market for its interest in the 800 MHz band towards the end of 2017 although this timeframe and the concentration's implications on the 800 MHz band will depend on the MCCAA's review of the proposed acquisition, and if the MCCAA decides not to object, any conditions that it may impose in doing so.

It is reiterated that the above submission has been made largely in the absence of detail as to the nature of the final arrangements in terms of operational structures or implementation timelines. However, insofar as the joined up entity would enjoy common ownership of two organisations that are currently independent of each other, the considerations being made in this submission apply irrespective of whatever shape or form the actual amalgamation of the two undertakings would ultimately take.

Appendix - Some relevant decisions concerning mergers and acquisitions at EU level

Proposed Merger and Decision	Notes	Proposed Remedies / Commitments
Commission opens in-depth investigation into the proposed merger of TeliaSonera and Telenor's Danish telecommunications activities (8th April 2015) Statement by Commissioner Vestager on announcement by Telenor and TeliaSonera to withdraw from proposed merger (11th September 2015)	The European Commission opened an in-depth investigation to assess whether the proposed joint venture between the Danish operators TeliaSonera AB and Telenor ASA is in line with the EU Merger Regulation. Both companies provide telecommunications services in several European countries. The Commission had concerns that on the Danish mobile telecommunications markets, the merged entity would face insufficient competitive constraint from the only two remaining players. This could lead to higher prices and less innovation. The announcement of the merger was abandoned by the respective business units in Denmark - the parties were not able to fully address the Commission's competition concerns created bty the proposed merger.	
The Competition and Markets Authority (CMA) has cleared BT's anticipated acquisition of EE. (15th January 2016)	After considering in detail responses to the provisional findings, as well as the extensive evidence gathered during the inquiry, the CMA inquiry group decided that the merger is not expected to result in a substantial lessening of competition (SLC) in any market or markets in the UK, including in relation to the supply of retail mobile, wholesale mobile, mobile backhaul, wholesale broadband and retail broadband services.	
Mergers: Commission clears acquisition of mobile network operator BASE by Liberty Global, subject to conditions	The transaction will bring together BASE, one of Belgium's three mobile network operators, with Telenet, a Belgian cable operator controlled by Liberty Global that also offers mobile services as a mobile virtual network operator. Mobile virtual network operators do not own a network of their own but rent that of other operators. The European Commission's investigation revealed that BASE competes aggressively on the Belgian retail mobile market and has challenged other operators with attractively priced offers. Telenet has been an exceptionally successful mobile virtual network operator in Belgium and its mobile offers have contributed to bringing mobile prices down. Without effective commitments, a merger of these two dynamic players would have significantly reduced competition, with a risk of higher prices and less choice and innovation for Belgian mobile consumers. The Commission also investigated concerns raised by competitors that, after the acquisition, Liberty Global would be able to exclude competitors from the market by bundling fixed and mobile services in packages. The Commission did not find these concerns justified. Indeed, the acquisition will not alter the market structure since Telenet already offers both fixed and mobile services. Finally, the Commission looked at whether the acquisition would result in worse wholesale access conditions for mobile virtual network operators in Belgium. The Commission concluded that the acquisition raised no concerns in this respect, since the incentives for BASE and Liberty Global to grant wholesale access to their network do not change with the merger.	To address the Commission's concerns, Liberty Global committed to: - sell BASE's share in Mobile Vikings, a mobile virtual network operator that uses BASE's network, to Belgian broadcaster Medialaan; and - transfer part of BASE's customer base to Medialaan. BASE and Medialaan currently have an agreement under which BASE sells mobile services under the brand JIM Mobile, owned by Medialaan. Liberty Global will transfer the customers of the JIM Mobile brand to Medialaan. Liberty Global also concluded an agreement with Medialaan, giving the latter access to BASE's mobile network at conditions that will allow Medialaan to compete effectively as a full mobile virtual network operator. The remedies adequately address the Commission's concerns since they ensure that a new mobile virtual network operator will enter the retail mobile market, to compensate for the loss of competition resulting from the exit of Telenet as an independent mobile virtual network operator.

Proposed Merger and Decision	Notes	Proposed Remedies / Commitments
Mergers: Commission prohibits Hutchison's proposed acquisition of Telefónica UK (11th May 2016)	The European Commission blocked the proposed acquisition of O2 by Hutchison under the EU Merger Regulation. It had strong concerns that UK mobile customers would have had less choice and paid higher prices as a result of the takeover, and that the deal would have harmed innovation in the mobile sector.	To address the Commission's competition concerns, Hutchison offered remedies, which however did not adequately address the Commission's competition concerns. In short, the proposed remedies did not resolve the structural problems created by the disruption to the current network sharing agreements in the UK. They were also not capable of replacing the weakened competition in the retail and wholesale mobile telecoms markets as a result of the takeover. Furthermore, the largely behavioural measures raised significant uncertainty as regards their effective implementation and monitoring, also because they were difficult to define precisely and some depended on the agreement of others: As regards the Commission's first concern (regarding the loss of competition between Three and O2), Hutchison proposed a set of measures aimed at strengthening the development of existing mobile virtual operators or supporting the market entry of new ones, including: o Hutchison proposed to give access to a share of the merged entity's network capacity to one or two mobile virtual operators. o Hutchison proposed to divest O2's stake in the Tesco Mobile joint venture, and to offer a wholesale agreement for a share of its network capacity to Tesco Mobile. o Hutchison proposed to offer a wholesale agreement for a share of its network capacity to Virgin Media. Even if those offers were taken up, the mobile virtual operators would have been commercially and technically dependent on the merged entity, with limited ability or incentive to differentiate their offerings, including in terms of network quality. As regards the Commission's second concern (regarding the UK network sharing agreements), Hutchison offered certain behavioural remedies, which would have been difficult to implement and monitor effectively. Three and O2 would have kept their respective stakes in the two network sharing agreements, MBNL and Beacon. As regards the Commission's third concern (regarding the takeover's effect on mobile virtual operators), Hutchison offered a set of behavioural measures aimed at granting mobile virtual operators access to 4G and future technologies. These were commercially unattractive for the mobile virtual operators and raised significant uncertainty as regards effective implementation. The Commission concluded that the proposed remedies would not have been able to prevent the likely negative impact on prices, quality of service and network innovation in the UK mobile sector as a result of the takeover, which is why it decided to block the proposed transaction to protect UK customers and businesses.
Mergers: Commission approves Hutchison/VimpelCom joint venture in Italy, subject to conditions (1st September 2016)	The European Commission approved under the EU Merger Regulation a proposed telecommunications joint venture between Hutchison and VimpelCom in Italy. The approval is conditional on the divestment of sufficient assets that will allow a new operator to enter the market.	The parties offered remedies that fully address the Commission's concerns, namely the divestment of sufficient assets to allow a new entrant to enter the Italian market as a fourth mobile network operator. This will replace the competition lost and ensure that Italian mobile customers are not harmed as a result of the transaction. The parties have proposed the French telecommunications operator Iliad as a purchaser for these assets. Iliad is the fourth successful entrant in the French mobile market and has the know-how and expertise to operate, invest and innovate in the Italian market. Today's decision also approves Iliad as the buyer of the assets to be disposed of by Hutchison and VimpelCom (a so-called "fix-it-first" remedy). More specifically, the remedies consist of: 1.divestment to the new mobile network operator of a certain amount of the joint venture's mobile radio spectrum from different frequency bands (900 MHz, 1800 MHz, 2100 MHz and 2600 MHz); 2.the transfer/colocation (i.e. sharing) by the joint venture to the new mobile network operator of several thousand mobile base station sites; and 3.a transitional agreement (for access to 2G, 3G and 4G, and new technologies), allowing the new

Proposed Merger and Decision	Notes	Proposed Remedies / Commitments
		mobile network operator to use the joint venture's network to offer customers nationwide mobile services until the new mobile network operator has built its own mobile network. The transfer of the spectrum blocks and mobile base station sites will enable the new mobile network operator to develop and roll out its own mobile network in Italy and operate as a fourth mobile operator, providing retail mobile services to consumers and offering wholesale access services to virtual network operators. The Commission found that the proposed remedies address its concerns, because they ensure that a new mobile network operator, Iliad, will enter the Italian mobile market. This will preserve effective competition, maintain incentives to invest in innovative technologies, and ensure that consumers will continue to benefit from effective competition.For the above reasons and subject to these conditions, the Commission was able to approve the transaction under the EU Merger Regulation.