EUROPEAN COMMISSION

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Malta Communications Authority (MCA)

Valletta Waterfront
Pinto Wharf
FRN 1913 Valletta
Malta

For the attention of:
Mr Edward Woods
Executive Chairman

Fax: +356 21 336 846

Dear Mr Woods,

**Subject: Commission Decision concerning Case MT/2014/1567**
**Call termination on individual public telephone networks provided at a fixed location in Malta**

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

## I. PROCEDURE

On 12 February 2014, the Commission registered a notification from the Maltese national regulatory authority, Malta Communications Authority (MCA),[1] concerning the wholesale market for call termination on individual public telephone networks provided at a fixed location[2] in Malta.

The national consultation[3] ran from 4 December 2013 to 17 January 2014.

On 20 February, the Commission sent MCA a request for information[4] and it received a response on 25 February.

1 Under 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 3 in 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.

3 In accordance with Article 6 of the Framework Directive.

4 Pursuant to Article 5(2) of the Framework Directive.

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

## II. DESCRIPTION OF THE DRAFT MEASURE

### II.1. Background

In April 2010, the Commission was notified of the last review of the market for call termination on individual public telephone networks provided at a fixed location in Malta, which it assessed under Case MT/2010/1071.[5] At the time, it noted that MCA had failed to notify it of certain regulatory measures setting the level of fixed termination rates and therefore invited MCA to notify it of all forthcoming price decisions in accordance with the EU consultation procedure.

In July 2010, under Case MT/2010/1110,[6] MCA notified the Commission of the review of fixed termination rates to be applied for one year in line with MCA's pricing strategies. At the time, MCA proposed to set call origination and call termination rates at the same level, as the two types of service used similar network components and usage patterns. A pure long-run incremental cost (LRIC) model would be developed by the end of 2012 to ensure compliance with the Termination Rates Recommendation.[7] The Commission did not comment.

In November 2012, under Case MT/2012/1402,[8] MCA notified the Commission of a new pure bottom-up LRIC model and review of rates for 2013 in the markets for call termination on individual public telephone networks provided at a fixed location. MCA proposed delaying application of the pure BU-LRIC rate until 1 July 2013. It explained that, given its limited resources, it had finalised the BU-LRIC model close to the deadline set by the Recommendation, and the application of the cost-efficient rates from 1 January 2013 would lead to a drastic reduction (by almost 94%) in the average fixed termination rate. This would have a significant negative impact on operators' revenues, considering also that the domestic market was very small. MCA also proposed to abandon the traditional time-of-day gradients and to apply a uniform average charge.

In its comments, the Commission recognised that regulators need to strike a balance between protecting consumer welfare and avoiding a disproportionate negative impact on operators, and that NRAs thus have a certain margin of discretion allowing them to delay to some extent the introduction of fully cost-oriented rates. Accordingly, the Commission considered that, exceptionally, the proposed delay in the implementation of symmetrical cost-oriented fixed termination rates may be acceptable, but should in no circumstances extend beyond 1 July 2013. Nevertheless, it invited MCA to take full account of the Termination Rates Recommendation and to consider setting cost-efficient fixed termination rates for all operators as of 1 January 2013, so that the full benefits of low fixed termination rates in Malta could more quickly be brought to end-users there and elsewhere in the EU.

[5] C(2010) 3226.

[6] C(2010) 5910.

[7] Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, OJ L 124, 20.5.2009, p 67.

[8] C(2012) 9781.

## II.2. Market definition

On the basis of the substitutability assessment, MCA identifies five distinct wholesale fixed termination markets in Malta, each of which features call termination services provided by individual network operators to third-party operators as well as self-supplied termination. Accordingly, MCA identifies five relevant markets for wholesale call termination services provided by GO plc, Melita plc, Vodafone (Malta) Ltd, SIS Ltd and Ozone (Malta) Ltd.

The geographical scope of each market is the national territory of Malta.

## II.3. Finding of significant market power

Based on its market analysis, MCA intends to designate GO plc, Melita plc, Vodafone (Malta) Ltd, SIS Ltd and Ozone (Malta) Ltd as undertakings with significant market power (SMP) on the relevant wholesale markets for fixed call termination.[9] The main criteria considered by MCA in determining SMP include market shares[10] and lack of countervailing buying power.

## II.4. Regulatory remedies

MCA proposes to maintain the following remedies on each SMP operator:

(i) access to/and use of specific facilities;

(ii) non-discrimination;

(iii) transparency (including a reference offer); and

(iv) price control.

MCA also proposes to maintain cost accounting and accounting separation obligations on GO plc and Melita plc.[11]

The price control remedy obliges all SMP operators to set their fixed termination charges at the level of the efficient rate established by MCA in 2012 on the basis of the 'pure BU-LRIC' model developed and applied from 1 July 2013. The local fixed termination rate remains 0.0443 euro cents per minute.

MCA explains that it has not identified any development which would necessitate revision of the current 'pure BU-LRIC' model or the resulting fixed termination rate.

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9 MCA does not yet designate Vanilla Telecoms Ltd as an SMP operator. It explains that Vanilla is still in the early stages of negotiations for interconnection agreements with other operators. It confirmed, however, that it would revise its analysis of the relevant market if a new operator entered the market and started providing termination services.

10 MCA considers each fixed network operator to have a 100% market share in the provision of services over its own network, irrespective of its size and technological platform. GO plc accounts for 70.3% of total fixed-line subscriptions in Malta, Melita plc for 29.1%, Ozone (Malta) Ltd for 0.4%, Vodafone (Malta) Ltd for 0.2% and SIS Ltd for 0.1%.

11 MCA considers that it would not be reasonable or proportional to impose cost-accounting and accounting separation obligations on Vodafone (Malta) Ltd, Ozone (Malta) Ltd and SIS Ltd, given their size and market presence. MCA sees no regulatory justification or additional benefit in imposing cost accounting or accounting separation obligations on those three smaller operators. It is of the view that the costs of maintaining such systems would outweigh the benefits. Nevertheless, it confirmed that it monitors the market continuously and will take further action should the need arise.

## III. NO COMMENTS

The Commission has examined the notification and the additional information provided by MCA and has no comments.[12]

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/EC[13] 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 Commission[14] within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.[15] You should give reasons for any such request.

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

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

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

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

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

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