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/2018/2120: Voice call termination on individual mobile networks in Malta

Comments pursuant to Article 7(3) of Directive 2002/21/EC

1. PROCEDURE

On 22 October 2018, the Commission registered a notification from the Maltese national regulatory authority, Malta Communications Authority (MCA)[1], concerning the review of the markets for voice call termination on individual mobile networks in Malta[2].

The national consultation[3] ran from 13 June 2018 to 16 July 2018.

On 24 October 2018, a request for information[4] was sent to MCA and a response was received on 29 October 2018.

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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 2 in Commission Recommendation 2014/710/EU of 9 October 2014 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 295, 11.10.2014, p. 79.

3 In accordance with Article 6 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.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The market for voice call termination on individual mobile networks in Malta was previously notified to and assessed by the Commission under cases MT/2013/1510[5] (market definition and SMP assessment) and MT/2014/1565 (remedies)[6].

MCA defined three markets for wholesale voice call termination on individual mobile networks in Malta, corresponding to the national coverage of the mobile networks of GO Mobile, Vodafone Malta and Melita Mobile and designated them as operators with significant market power (SMP) on their respective markets. The criteria considered by MCA were: market share, potential market entry, degree of countervailing buyer power, and scope for price competition.

MCA imposed on GO Mobile, Vodafone Malta and Melita Mobile the obligations of access, transparency, non-discrimination, accounting separation, price control and cost accounting. With regard to price control, MCA set the MTRs, on the basis of a pure BU-LRIC model, at 0.4045 eurocent/min. to be applied as of 1 April 2014.

The Commission did not have comments.

2.2. Market definition

MCA defines three markets for wholesale voice call termination on individual mobile networks in Malta, corresponding to the national coverage of the mobile networks of GO, Vodafone Malta and Melita.

2.3. Finding of significant market power

MCA proposes to designate GO, Vodafone Malta and Melita as operators with significant market power (SMP) on their respective markets for voice call termination on individual mobile networks. The criteria considered by MCA when assessing SMP are: market share, potential market entry, degree of countervailing buyer power, and scope for price competition.

2.4. Regulatory remedies

MCA intends to maintain all the current obligations imposed on GO, Vodafone Malta and Melita such as the obligations of access, transparency, non-discrimination, accounting separation, price control and cost accounting. With

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

5 C(2013) 7875.

6 C(2014) 1719.

regard to price control, MCA proposes to maintain the current rate of 0.4045 eurocent/min for the next regulatory period. The rate was set on the basis of a pure BU-LRIC model adopted in 2014. In its response to the RFI, MCA explained that revising or updating the 2014 model would not have translated into an improvement of the situation in the relevant market.[7]

The current MTR shall remain in force, meanwhile the MCA intends to closely monitor and participate in the process whereby the EU Commission is expected to implement a common mobile termination rate in Europe (planned for 2020) based on parameters yet to be formalized, following the political agreement concerning the European Electronic Communication Code reached on 5th of June 2018.

MCA also specified that it will continue to monitor the situation and will account for any significant changes in subsequent analyses when and if required.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the MCA and has the following comments:[8]

3.1. Efficient level of termination rates

The Commission takes note of MCA's proposal to maintain the current rate of 0.4045 eurocent/min, which was set on the basis of a pure BU-LRIC model adopted in 2014, for the next regulatory period, instead of revising or updating the cost model to calculate new tariffs.

The Commission further takes note of the fact that the Maltese termination rate is the lowest in the Union and of MCA’s explanation, as to why it did not revise the old cost model (e.g. to take into account most recent technologies like 4G), particularly in view of the upcoming Eurorate.

The Commission acknowledges that in the past, whenever an NRA proposed to set the termination rates at levels which were not reflective of the recent market conditions, the Commission has expressed serious doubts as to the compliance of such measures with the EU Regulatory Framework.[9]

7 In its response to the RFI, MCA clarified that the model was developed in 2013 and does not capture the latest network structures and technologies such as, but not limited to, 4G. MCA is therefore of the view that an update of the model would not be practical. It would potentially require a complete redesign of the model in order to ensure that the latest technology developments are mapped. Therefore, such development, at the current stage, would be costly and time consuming. The MCA considers that the complete revision of the 2014 BU pure-LRIC model would create uncertainty and points out that the mobile termination rate in Malta is the lowest in the European Union/EEA.

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

9 See i.a. case RO/2017/2018. In this case, the Commission opened a phase 2 investigation because ANCOM did not review/update the model. ANCOM withdrew the draft measure and then notified a new draft measure proposing initially a short transition measure where they kept the same rates (case RO/2017/2041), followed by a subsequent notification (RO/2018/2065), where they set the MTRs on the basis of the EU benchmark. In the latter case the Commission had no comments.

Recently, the negotiations on the EECC have been concluded and the Commission is currently working on a delegated act aimed at setting single maximum union-wide fixed and mobile termination rates (Eurorates), based on a pure BU-LRIC model applicable on all operators. The delegated act will be adopted by 31 December 2020.

Considering the current level of the Maltese tariffs and as the current measure is merely relevant for the interim period, the Commission distinguishes this case from its previous practice.

Indeed, contrary to the situation underlying in case RO/2017/2017-2018, the level of the rates that MCA proposes to maintain is low compared to the EU average[10]. Given the likely general downward trend of the EU average termination rate, the gap between the Maltese termination rate and EU average termination rate would probably decrease. Maintaining the lowest rate in the EU by MCA would not have a similar effect as the notified measure in the Romanian case and, hence, does not raise the same serious concerns from the Commission.

Nevertheless, the Commission encourages NRAs – during the transition period to the Eurorate – to continue updating their existing BU LRIC models with the most recent data as they become available (e.g. traffic patterns, volumes of voice and data, financial parameters, etc), to the extent possible with reasonable effort. Such update would, in the Commission's view, not be overly burdensome and may result in more accurate estimate of the termination costs for the relevant review period.

Therefore, the Commission asks MCA, to consider to update the current model with readily available more current input data (i.a. traffic volumes) and to assess the pertinence of the outcomes to the transition to the Eurorate, which shall take into account the weighted average of efficient costs in the Union.

Pursuant to Article 7(7) of the Framework Directive, MCA shall take the utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure; 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[11] 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[12] within three

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[10] In the Romanian case the level of the tariffs was above the average pure BU-LRIC MTRs in EU.

[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 2 298 87 82.

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,

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For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission,
Roberto Viola
Director-General

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