

MALTA

Note: This document is an excerpt from the Staff Working Document attached to the Communication 'Towards a Single European Telecoms Market – 13th Progress Report (COM (2008(153)). The Communication and the Staff Working Document, as well as the corrigendum of 28th May 2008 can be found on Europa at the following url address: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/13th/index_en.htm

INTRODUCTION

Malta has seen an improvement in the competitive situation across markets in 2007 as operators, seeking to become converged players, have expanded into communications markets other than their traditional ones. Broadband penetration grew at a faster rate this year after some previous slowdown and a new competitor with broadband wireless access services entered the market. Consumers' choice of mobile operators was set to improve following the allocation of the third 3G licence.

On the regulatory side, the market for wholesale broadband access has still to be analysed, following the withdrawal of a previous notification. The length and quality of the appeal procedure continued to be one of the major obstacles to the effectiveness of the regulatory framework in Malta. Significant progress was made in mobile number portability as portings more than tripled in 2007.

REGULATORY ENVIRONMENT

Main regulatory developments

In August 2007, the lengthy legal process to determine who would acquire the third 3G licence came to a conclusion, with the licence ending up in the hands of the national cable TV operator. Negotiations for an MVNO agreement were eventually concluded on a commercial basis without the need for intervention by the NRA (the MCA). A proposal to increase the ceilings for monetary sanctions available to the MCA was in parliament at the time of writing this report.

Organisation of the NRA

The Malta Communications Authority (MCA) assumes all the responsibilities of the NRA under the EU regulatory framework. It cooperates with the Office of Fair Competition (a branch within the Ministry of Competitiveness and Communications functioning as the competition authority) according to a Memorandum of Understanding. This cooperation was not considered satisfactory by industry, which pointed to some confusion as to the division of tasks between the two authorities, and saw the Office of Fair Competition as inactive and lacking understanding of the sector.

According to a draft law amending inter alia the Maltese Competition Act, which was being discussed by Government, competition law powers were to be assigned to the

MCA within the electronic communications field with the intention of creating a one-stop shop. The new powers to be thus granted to the MCA are expected to enter into force in 2008 and were welcomed in particular by the alternative operators. The Office of Fair Competition, which has had four electronic communications-related cases in the last four years, was at the same time in the process of generally strengthening its resources such as economists and legal staff.

The limited sanctioning powers available to the MCA with regard to access and interconnection-related disputes were being addressed in a law proposal. The amended law would raise substantially the maximum financial penalties, currently €233 000 for a one-off fine and €4 660 on a daily basis, and would also remove the current limit of €23 300 for fines for interconnection-related offences. At the time of writing this report the bill had been approved by parliament and was expected to enter into force early in 2008.

Decision-making

The MCA was planning to finalise its first round of market analyses by the re-notification of the wholesale broadband access market early in 2008.

In general, operators have been concerned about the transparency of the market analysis process. In certain markets the NRA has imposed most or all remedies available but the obligations in question were not laid down in detail. According to some operators, the implementation of access agreements based on those obligations risked becoming complex and time-consuming, increasing in turn the risk of disputes and eventual appeals. The MCA, for its part, was concerned that appeals were being made systematically, even for minor issues.

While the lack of specification might give rise to appeals, all market players were united in their concerns about the functioning of the appeal process.

One principal issue seemed to be the perceived lack of resources and expertise of the appeals board, which in turn led to long handling times and regulatory uncertainty. At the time of drafting this report, there were 12 appeal cases pending, one of which concerned a decision taken in 2003 on the basis of the old telecommunications legislation.

It is not clear whether the replacement of the former Telecommunications Appeals Board by the Communications Appeals Board has improved the situation to the degree anticipated by the legislator and whether an effective appeal mechanism within the meaning of the regulatory framework is in place.

At the same time, decisions which are the subject of an appeal tend not to be suspended. In one case – an appealed decision on open access to the cable TV network, based on the old telecommunications law – the MCA agreed not to enforce the decision while the appeal was being heard. The case was still pending at the time of drafting this report.

MARKET AND REGULATORY DEVELOPMENTS

No macroeconomic data on the Maltese market were available at the time of drafting.

Market developments in 2007 were characterised by a drive to create converged service operators, as evidenced by a take-over of the digital terrestrial broadcaster by the fixed

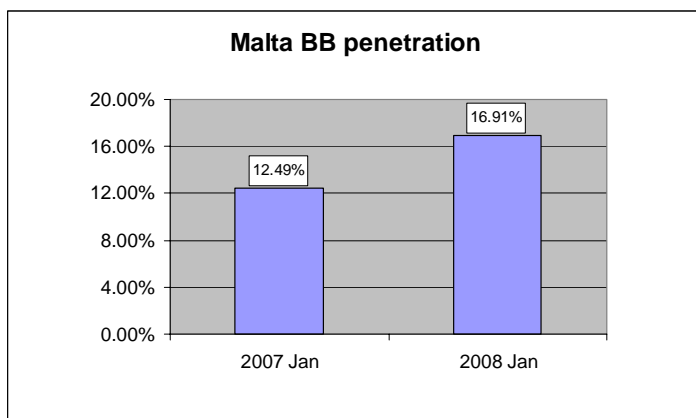
incumbent in February 2007, the acquisition by the cable incumbent of a controlling share in the third 3G operator and the launch by a mobile operator of its broadband wireless access products services in July 2007. This movement could benefit competition on all platforms. Promotion of bundled packages started in July 2007, but no quadruple play or Universal Mobile Access (UMA) solutions were commercially available at the time of writing this report.

The electronic communications marketplace in Malta now consists of two vertically and horizontally integrated operators that will soon be capable of providing quadruple play, a foreign-owned mobile operator expanding into other communications markets as well as an alternative telecommunications provider using wholesale components from the fixed incumbent, and a group of small Internet Service Providers.

The fixed-to-mobile substitution process continued in Malta, with a further increase in the mobile networks' share of the overall voice traffic. There were, at the time of drafting, interconnection agreements between all market players in Malta.

Broadband

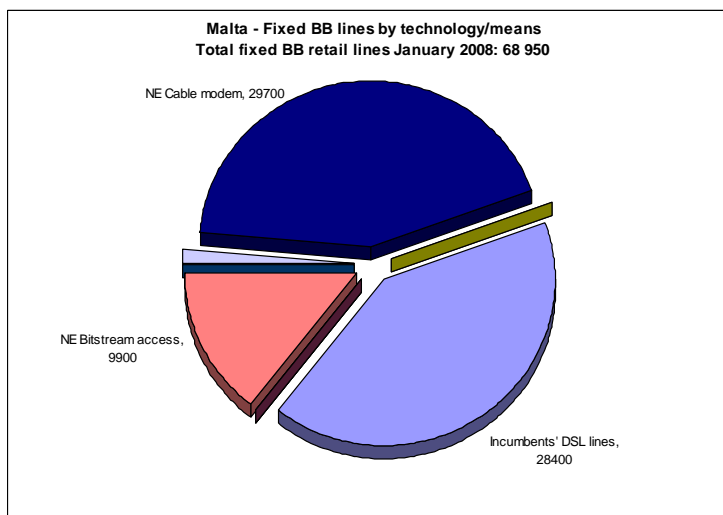
Market situation



Broadband penetration in Malta in January 2008, at 16.91%, remained below the EU average of 20.0%. While in 2006 broadband penetration growth was stagnant, 2007 saw a substantial increase. While the slower growth in 2006 could be attributed to subscribers downgrading to attractively priced 128 Kbps services (not classified as broadband, but

available from both the incumbent DSL provider and the cable operator), in 2007 the DSL and cable providers upgraded the speed of these services considerably to a minimum of 2 Mbps at no extra charge. Generally, as measured by price in relation to speed, the Maltese broadband market has seen decreased broadband prices.

DSL continued to be the predominant technology with 55.5% of all retail broadband lines as at January 2008. In the reporting period, the subsidiary of the fixed incumbent strengthened its position on the retail broadband market for the fourth consecutive year to reach a market share of 41.2% as at January 2008.



The non-incumbent ISPs were consolidating, but their combined market share was quickly shrinking, with churn mainly to the fixed-line incumbent. Whereas in January 2007 these ISPs were providing almost 21% of all broadband connections (on a resale basis), in January 2008 their market share was only 14.4% (on the basis of bitstream access). In July 2007, one of the three broadband wireless licence holders finally launched commercial services, and was planning nationwide coverage by March 2008. Malta already enjoyed the coverage of two ubiquitous networks (cable and DSL) over the whole national territory.

There was no demand for local loop unbundling, and there was at the time of writing this report still no wholesale broadband access product available to third parties on cable.

Regulatory issues

In December 2006 a draft MCA decision regarding the wholesale broadband access market was notified to the Commission. It has been withdrawn following discussions with the Commission services on the scope of the market analysis. A new draft decision on this market was expected to be notified early in 2008.

The effective roll-out of the three broadband wireless access networks licensed in 2005 remained an issue. The two licence holders who, at the time of drafting this report, had not launched services were paying sanction fees due to missed roll-out licence requirements. The third licence holder (a mobile operator) launched its broadband wireless access service in July 2007 (with limited consumer interest so far). The licences were technology-neutral in allowing any type of communication on the licensed frequencies, including mobile services, as long as broadband services were offered. However, there has been concern among operators that the administrative fees for using certain frequencies were based on point-to-point usage, making some point-to-multipoint communication in services to end-users too expensive, thus limiting the practical scope of the licence.

The overall low interest in the LLU product as a concept may help explain the lack of development of the available offer. The incumbent operator pointed to the particular character and size of the Maltese market as a reason for this lack of interest. While a LLU offer was in place and the published prices were relatively low in an EU comparison, it is not clear whether prices had been published for all the necessary components. Moreover, alternative operators pointed out that the RUO seemed to be modelled on the British incumbent's offer, with large bundles of subscriber lines in comparison to the smaller amounts of potential customers available in Malta.

Mobile markets

Market situation

Maltese consumers' available choices seem to be increasing following the allocation of the third 3G licence. This may have a positive effect on prices – among the highest in the EU – and penetration, which grew substantially but, at 91%, remains below the EU average of 111.8%. Most subscriptions were pre-paid. So far, handsets have only been subsidised to a limited extent, but the subsidisation of 3G phones had increased lately, as operators sought to direct traffic onto their 3G networks.

3G as well as HSDPA coverage by active operators was already at 100% of the national territory. Mobile voice call minutes continued to increase, but SMS was inexpensive and popular, and may have provided some substitution to voice. An agreement with an independent supplier of MVNO enabling solutions was reached in autumn 2007. The agreement was reached after a dispute was launched and then withdrawn.

Regulatory issues

The lengthy legal process to determine who would acquire the third 3G licence finally came to a conclusion in August 2007. The original winning bidder for the licence in question did not initially pass the due diligence examination by the MCA and was denied the licence and appealed. While the decision was subject to appeal, the plaintiff was acquired by a venture capital company, and after a new due diligence procedure the MCA changed its decision in favour of the plaintiff. The venture capital company awarded the third 3G licence eventually reached an agreement with Malta's cable TV operator, and transferred the licence to that operator. According to the terms of the licence a fee of € 823 434 had to be paid up-front or a slightly higher amount but split into instalments over the duration of the licence. Roll-out requirements were identical to the other two licence holders: 50% population coverage in two years from the issuing of the licence (August 2007), and 99% in five years' time. With the third 3G operator due to start providing services, the competitive situation will need to be re-assessed in the analysis of this market planned for 2008.

The mobile termination rate glide path fixed by the MCA in December 2005 and based on EU25 benchmark was reaching its floor in January 2008 at €0.092. The MCA will review the strategy in 2008.

Roaming

Maltese mobile operators were among those potentially affected the most by the new Roaming Regulation, with around 25% of their total revenues coming from international roaming, but there were, at the time of drafting this report, no indications that the Regulation was not being complied with. Prices have been set at the maximum level indicated by the Regulation.

Fixed

Market situation

While there was fixed-to-mobile substitution on the traffic level, with the continued decrease of fixed minutes, there has so far been no decrease in the numbers of fixed telephony subscribers – in fact some increase has been noted, which can be attributed to the entry of new alternative operators and to the fact that subscribers now have more than one subscription – and Malta retained one of the highest penetration levels in the EU.

While the fixed incumbent operator has maintained its dominant position in local access and local (national) calls as well as fixed-to-mobile calls, its market share in terms of revenues has started to fall – from close to 100% in 2006 to 98.84% at 31 December 2006 following the cable-TV operator's entry into the national voice market in late 2006. A wholesale line rental (WLR) agreement has also been implemented. While this could make alternative services more attractive, the alternative operator on the receiving side of

the agreement was concerned that the wholesale price was nearly identical to the retail subscription price of the incumbent. Generally, alternative operators expressed concern about margin squeeze and non-price discrimination in the fixed voice market. In reaction to complaints, the MCA launched a consultation process to reinforce rules that prohibit anti-competitive win-back tactics.

International bandwidth and leased lines – critical for alternative operators – were expensive, while, according to the ISPs, there is no published international leased lines offer above 2 Mbit/s.

Regulatory issues

According to the obligations placed on it by the MCA, the fixed incumbent must apply cost orientation to its interconnection rates by using accounting separation and a cost accounting model based on historic costs. The cable-TV operator's termination rates, in turn, cannot be higher than the termination rates of the incumbent. Following the bottom-up model designed by the MCA to depict an efficient next-generation network, beginning with a fixed interconnection price decrease by 33% in 2006, the MCA lowered the same price an additional 33% in January 2007. The call termination rate – at €0.013 not adjusted further at the time of writing this report – remained among the highest in the EU, although to a smaller extent than before.

The MCA was reviewing the terms and conditions (service level agreements) of the incumbent's reference interconnection offer (RIO), following a public consultation, and a decision was due in January 2008. Interconnection rates were symmetric and reciprocal. A leased-lines costing model was being finalised in autumn 2007. The WLR agreement described above was, at the time of drafting this report, being reviewed by the MCA.

Broadcasting

Market situation

According to NRA figures some 86% of Maltese households were connected to a cable TV network owned by a single operator by September 2007. The remaining households were reliant on (digital or analogue) terrestrial TV reception, while satellite dish ownership continued to be minimal. Digital terrestrial television TV (DTTV) was provided by the subsidiary of the fixed incumbent. At the time of writing this report, there were no commercial DVB-H¹ transmissions (see also below) and no IPTV offer. The mobile subsidiary of the fixed incumbent was offering a TV over EDGE service. As in several other Member States, problems with intellectual property rights remained unresolved for this transmission form. Analogue terrestrial transmission was carried out by four programming companies themselves.

Regulatory issues

Two operators, including the fixed incumbent, were initially assigned eight frequency channels for a duration of eight years with the possibility of an extension by a further eight. The alternative operator, which started commercial operations in July 2005, had

¹ Digital Video Broadcasting Handheld, a mobile TV standard.

subsequently been acquired by the fixed incumbent in February 2007. Despite the fact that the national frequency strategy caters for any type of broadcasting service, all available coordinated channels were assigned to terrestrial digital TV networks in May 2005. No licences specifically for DVB-H transmission services had been granted at the time of writing this report and no coordinated frequencies were available. Malta is on track for analogue terrestrial TV transmission switch-off by 2010.

Operators considered that there was some lack of clarity about the division of competences between the MCA and the national broadcasting authority. Efforts were being made at the time of drafting to clarify with the broadcasting authority the roles and responsibilities for ensuring compliance with all content-related provisions. Operators had also expressed some confusion as to the responsibility in a case regarding the bundling of fixed telephone subscriptions and digital terrestrial television, which had been subject to investigation both by the MCA and by the competition authority.

A Policy and Strategy for Digital Broadcasting meeting General Interest Objectives was put out for consultation in September 2007. The document proposed a policy and implementation strategy in respect of digital terrestrial broadcasting relative to the criteria used for classifying a broadcast channel as meeting general interest objectives, the process for allotting capacity to the qualifying broadcasts, the relationship between must-carry obligations and general interest objectives, the application of must-carry obligations across transmission platforms, and the conditions attached to the usage of frequencies reserved for broadcasting that meets general interest objectives.

Horizontal regulation

Spectrum management

Malta appears to have implemented all four Commission radio spectrum harmonisation decisions. Three of them (2004/545/EC in the 79 GHz frequency band, 2005/513/EC in the 5 GHz band and 2005/50/EC in the 24 GHz band) were effectively implemented in January 2006 by adjusting the national frequency plan (NFP). The fourth, Decision 2005/928/EC regarding the 169 MHz range, was implemented in 2007 by updating the NFP and adopting a General Authorisation.

In September 2007, the MCA adopted a policy document – "Strategic Framework for the management of Radio Spectrum 2007-2010" – which was based on a consultation document finalised in October 2006. This document, focusing on strategies to ensure efficient and flexible spectrum management, mentioned the possible introduction of frequency trading, spectrum liberalisation and licence exemptions. It also established spectrum neutrality as a principle.

"Refarming" of spectrum by allowing the use of 3G services in the 900 MHz spectrum currently used for 2G services was still being examined by the authorities at the time of drafting this report. An important question is whether or what fees should be paid for 2G/3G licences. The 2G licences expire in 2010.

THE CONSUMER INTEREST

Universal service

The incumbent is the designated universal service provider. It has to satisfy all reasonable requests for connection to a fixed location, and provide directory and directory enquiry services and special end-user facilities for disabled users. All voice telephony providers must ensure free access to emergency services. A leading mobile operator is responsible for providing handsets for people with hearing difficulties. While all these obligations have been met, no request for USO funding has been submitted to MCA.

Number portability

Since number portability became available for mobile subscribers as of 1 April 2006, 20 000 mobile numbers have been ported, an increase of 14 500 numbers in the reporting period. Fixed number portability became relevant after the cable TV operator's interconnection agreement with the incumbent in October 2006 and its subsequent launch of voice services. At the time of drafting this report, 1 500 fixed numbers had been ported in total.

European emergency number 112

112 is the only advertised number for emergency services in Malta and has been working effectively since 2000.

Must-carry

As explained above, the current must-carry regime (whereby the broadcasting network operators have to carry all national channels) was still under review by the competent authorities, who were examining the options for a way forward with regard to general interest objectives and must-carry obligations.

Data protection

The bill transposing the data retention directive has been drafted and is likely to be adopted in the second quarter of 2008.