

MALTA

MAIN MARKET DEVELOPMENTS

The total annual turnover for the electronic communications sector as of December 2009 in Malta amounted to €249 million, a moderate decline (-4.3%) compared to 2008, but roughly in line with 2007, which can be regarded as a positive performance given the global context of the economic downturn. Year-on-year investment in telecoms networks grew by a minimal 0.3% to €42 million and was essentially made up of investment from mobile operators and compensated for the decrease in investment by other operators, which went down by more than 50% during the same period.

Broadband penetration continued to grow to reach 29.5% as of January 2011, which is above the EU average of 26.6%. Since the last small alternative ISP closed shop at the end of 2010, the broadband market is now essentially divided between two competing infrastructures, namely fixed ADSL and cable, both covering almost 100% of the territory. In this context, infrastructure based competition has intensified, in particular through increasingly popular multiple play packages (in July 2010, 14.6% of the population was subscribing to a bundled offer).

By contrast, consumers saw their choice increase in the mobile telephony sector. The entry into the market of a third operator in 2009 has increased the level of competition, which has put pressure on prices. Despite a clear downward trend, which contributed to reducing the gap between mobile prices in Malta and the EU average, the average rate in 2009 is still among the highest in the EU.

No significant progress has been made on the move towards NGA networks. The incumbents are currently in the process of rolling-out FTTC in certain areas. However, in relation to FTTH, operators have not announced any investment plans or a timeframe yet. In addition, no major developments have been observed in terms of an upgrade to existing infrastructure.

MAIN REGULATORY DEVELOPMENTS

In June 2010, the Ministry for Infrastructure, Transport and Communications (MITC) issued a consultation document on proposed amendments to the Malta Communications Authority (MCA) Act, the Electronic Communications (Regulation) Act, and various subsidiary regulations enacted under this Act, pursuant to the newly revised EU telecoms rules adopted in December 2009. In their responses to this consultation, operators expressed reservations focusing mainly on those draft amendments designed to strengthen consumer protection, which are mostly outside the scope of the transposition of the EU framework. The draft Bill was sent to the Parliament in early 2011 in view of its adoption by the deadline for transposition of 25 May 2011, as laid down by the revised EU framework.

The refarming process is ongoing. Following a consultation carried out in 2009, the MCA published in July 2010 a decision addressing the assignment methodology and setting down licence conditions for the 900 MHz and 1800 MHz bands. According to the announced timetable, the reassignment should be finalised in early 2011.

Since the 2008 Green Paper, there has been limited progress in the setting up of the NGA-related regulatory environment. In particular, no decision has been taken yet regarding the role that the Government may take in facilitating the roll-out of NGA networks. In order to

determine the adequate regulatory framework, further action has been announced for 2011, such as a technical and economic analysis for a FTTH infrastructure. The MCA will also assess the benefits of the sharing of network elements, such as ducts and in-building wiring between operators. Operators have indicated that they will delay any investment plan until clear rules are in place.

Moreover, in order to ensure universal access to a broadband connection throughout the country, the MCA published a consultation document in September 2010, which is aimed at including in the scope of universal service a broadband connection capable of a minimum data rate of 4 Mbps.

NRA

The MCA is the regulatory body in charge of the whole electronic communications sector. Its remit also covers e-commerce, eSignatures, eInclusion, eBusiness and the postal sector. The MCA continued to carry out its regulatory duties in an independent manner, but a certain lack of organisational flexibility has been felt due to delays from the Government in approving some of the authority's budgetary and human resources commitments.

Operators continued to stress their good relationship with the MCA and were satisfied in particular that consultation processes have been respected, although some called for more transparency concerning the publication of responses to consultations. The main operators seemed to agree that the dispute-resolution procedure works well. Five disputes were filed in 2010, which were still pending at the end of 2010.

With respect to the Communications Appeal Board, which has jurisdiction to hear appeals from decisions of the MCA, all operators pointed to a lack of improvement as regards the effectiveness and timely resolution of appeals, which they believe to be caused by a lack of technical expertise. A significant increase in the number of appeals has been reported in 2010, as five cases have been filed. This raised the number of cases pending to twelve at the end of 2010, in comparison to eight in September 2009.

Similar criticisms were expressed about the functioning of the Office for Fair Competition (OFC), which falls under the Office of the Prime Minister. For instance, it remains worrying to note that (as reported last year) a case concerning the wholesale broadband access market which opened in 2005 is still pending at the time this report is drafted. A long-awaited reform of the OFC was undertaken in the course of 2010 and operators expressed hope that it would contribute to a reduction in such delays.

ECONOMIC REGULATION

Broadband

Broadband plans

Malta is currently in a transition phase with respect to its national broadband plan. The previous policy plan ('Smart Island Strategy') was running from 2008 to 2010. According to this strategy, Malta was aiming to achieve 100% broadband coverage at 2 Mbps by 2010, as well as 20% of households being connected to next generation networks. The Government has now started to work on a new strategy outlining objectives for 2015.

NGA roll-out has so far been minimal. The fixed incumbent is deploying FTTH in trial areas but, at present, no concrete large-scale FTTH roll-out plans of operators exist. The Government, in partnership with the MCA, has launched a feasibility study regarding possible options for NGA intervention. All operators considered the current regulatory uncertainty as a strong disincentive to invest in the short term.

In terms of an upgrade to existing infrastructure, developments have also been limited. On the one hand, the fixed incumbent is focusing its broadband network investments on upgrading the last mile of the connection to ADSL2+, since VDSL is not considered viable. On the other hand, the cable network has not been upgraded to the DOCSIS 3.0 standard yet.

Market situation

Year-on-year broadband penetration continued to grow, reaching 29.5% in January 2011, thereby placing Malta in 9th position in the EU, ahead of the EU average of 26.6%. With a growth of 2.7 percentage points, Malta ranked second in the EU in terms of speed of progress of broadband penetration rate and was well above the EU average growth of 1.7 percentage points. The total number of broadband lines thus increased to 121 880 in January 2011, compared to 110 779 in January 2010. Mobile broadband penetration remains low at 2.5% as compared to the EU average of 7.2%.

Maltese consumers continue to enjoy increasing download speeds and download limits. Indeed, as of January 2011, 87.4% of all broadband subscriptions had a connection speed of 2 to 10 Mbps. However, Malta is lagging behind in terms of proportion of lines with speeds exceeding 10 Mbps, which was only 11.7% against an average of 38.9% in the EU.

Since the market exit of all small independent ISPs (the last one closed at the end of 2010), which together held a 30% market share in 2007, the retail broadband market has become more concentrated. The market shares of the former ISPs have been mostly taken over by the incumbent fixed operator. According to the MCA, at the end of June 2010 the two main operators were controlling over 95% of the market and the fixed incumbent's market share exceeded 50%, thus surpassing that of the cable incumbent. By contrast, the market share of wireless broadband services did not take-off and maintained its low standing with around 3% of the market.

In addition, bundled retail offers are becoming increasingly popular. In July 2010, 14.6% of the population was subscribing to a bundled offer. Furthermore, according to the MCA, at the end of 2010 over 40% of broadband and TV connections were part of a bundle. The difficulty of competing against quadruple play offers was strongly underlined by the main alternative operator. The MCA is concerned that this situation might not allow for the sustained development of a competitive environment.

Regulatory issues

In June 2010, the MCA published a Decision, which followed a public consultation issued in November 2009, mandating a series of decisions aimed at improving the Reference Unbundling Offer of the fixed incumbent. However, there has still been no progress in LLU take-up due the perceived lack of feasibility. The MCA has been working on reviewing further aspects of the Reference Unbundling Offer (RUO) of the fixed incumbent to facilitate

competition, in particular by ensuring that Sub-Loop Unbundling (which is already provided for in the RUO) takes into consideration the incumbent's increasing drive towards FTTC¹.

The wholesale broadband access market was deregulated in 2008. Following a request by an alternative operator, no agreement could be reached in commercial negotiations for wholesale broadband access. This operator is calling for a regulated wholesale broadband product or an SLU solution in order to be able to replicate bundled packages offered by its competitors.

For 2011, the MCA has announced its intention to review the wholesale network infrastructure access market and the wholesale broadband access market. In addition, the MCA indicated its intention to closely analyse the impact of bundled offers on competition.

Mobile

Market situation

Competition in the mobile telephony sector has increased since the market entry of a third mobile operator, a subsidiary of the cable incumbent, in 2009. In addition, two MVNOs launched their services in 2010. A clear downward trend has been observed in mobile tariffs. The average price per minute decreased, but remains high in comparison to other Member States. However, the gap between the average price in Malta (€0.16) and the EU average price (€0.10) in 2009 was lower than in 2008 (€0.24 in Malta, against an EU average of €0.13).

Mobile penetration continued to increase, reaching 108.85 % at the end of 2010. According to the MCA, the main operator leads the market with a share of 48% at the end of 2010, followed by its main competitor, a subsidiary of the fixed incumbent, at 42.9%, while the new entrants' market share stands at 8.9%. The proportion of pre-paid and post-paid customers has remained stable, with over 80% pre-paid subscribers in October 2010.

Regulatory issues

The MCA completed its review of the mobile termination market. It proposed a revised wholesale Mobile Termination Rate (MTR) of €0.0617, representing a reduction of approximately 30%. The methodology used to calculate the new proposed MTR was based on the Interconnection Strategy decision adopted by the MCA in May 2010, which states that the MCA is committed to being fully compliant with the Commission Recommendation on Termination Rates by the end of 2012. In the meantime however, the calculation of MTRs will remain based on an interim benchmarking methodology. In reaction to this, the new entrant called for MTRs to be calculated on the basis of more recent data while other operators voiced objections to the future introduction of a pure LRIC model, which they consider to be too cumbersome.

Roaming Regulation

According to the MCA, roaming was up by 24.4 % in 2009, notably thanks to lower roaming tariffs. The new cut-off limit for data roaming charges was implemented, although compliance action had to be taken by the MCA against one operator. In addition, when this report was drafted, another operator was in the process of upgrading its infrastructure in order to be able to apply automatically the cut-off facility to its pre-paid customers. Retail data roaming charges are seen as still too high.

¹ A consultation and proposed Decision on this issue were published by the MCA on 15 April 2011.

Fixed

Market situation

There are four nation-wide fixed networks, two of which have wireless infrastructures, and five service providers operating in Malta. At present no strong fixed-to-mobile substitution has taken place on the market. As of December 2009, the proportion of traffic occurring on fixed networks was 69.7%, which is remarkably high considering that in terms of EU average the share of calls on mobile networks has overtaken that on fixed networks. Furthermore, even if it has decreased since 2008 the fixed incumbent retains a strong lead with a 74% market share for all types of calls by traffic volume as of December 2009. At the same date the market share of VoIP operators reached 25.1%, which is in contrast well above the EU average of 16.6%

Regulatory issues

The MCA completed the review of the fixed origination and termination markets and the market for transit services in the fixed public telephone network. With regard to the fixed termination market, the MCA proposed to designate all five fixed network operators as having SMP and to impose on all of them the following obligations: access, non-discrimination, transparency and price control. The MCA also proposed mandating the obligations of accounting separation and cost accounting on the fixed incumbent network operator and on the incumbent cable operator.

The MCA published draft decisions to review local wholesale fixed call origination and termination rates. The calculation of fixed termination rates is based on the Interconnection pricing strategy published by the MCA in May 2010. Reviews of the markets for terminating segments of leased lines and access and call origination on public mobile telephone networks are planned for 2011.

Broadcasting

Market situation

The broadcasting market is characterised by an intense competition between the cable and the fixed incumbents. The cable operator is still leading the market but its share has decreased from 71.2% in July 2009 to 65.9% in July 2010. The acquisition by the fixed incumbent of sports rights that were previously owned by the cable operator triggered a heated debate over the summer of 2010. Moreover, a problem of piracy has been reported, linked to the spread of set-top-boxes often used to watch content transmitted by satellite using code-sharing. Several operators called on the authorities to tackle this issue in a more pro-active way since piracy is undermining the ability of legal players to invest in content acquisition.

Regulatory issues

The switchover from analogue to digital broadcasting took place on 1 February 2011 and will be followed by full analogue switch-off on 1 June 2011. While subscription-based digital terrestrial TV services were already introduced in 2005, the last phase in that process consists of the transition of public-service television to digital. An awareness campaign targeted at viewers who still receive analogue free-to-air television via a conventional rooftop aerial will be conducted over Spring 2011.

Horizontal regulation

Spectrum management

The GSM Directive (2009/114/EC) was implemented in Malta in May 2010 by means of an amendment of the National Frequency Plan. Following a consultation in 2009, the MCA decision concerning the re-farming process was published in July 2010, setting out the methodology of the selection process and establishing a common annual price of €224 000 per 5MHz channel. The current active licences in the 900 MHz and 1800 MHz bands have different termination dates. In order to ensure a smooth migration, the existing GSM licences are being extended until the commencement of the licences that will be awarded in accordance with the re-assignment process outlined in the MCA decision. In October 2010, the MCA invited applications for spectrum in these bands. At the expiry of the period for submitting applications, three had been received. According to the envisaged timeframe, rights of use would be granted in early 2011. One operator has filed a complaint, challenging the fact that channels in both bands are valued at the same price.

With respect to the future of the 800 MHz band, it was reported by the regulatory authority and by operators that the availability of digital dividend might be affected by interferences originating from neighbouring countries.

According to information available to the Commission, not all of the necessary preparation has been made in Malta which would facilitate the granting of an authorisation to the operators of systems providing mobile satellite services selected by the Commission in accordance with European Parliament and Council Decision N° 626/2008/EC.

Rights of way and facility sharing

Rights of way fall under the responsibility of Transport Malta, an independent authority under the supervision of the MITC. Operators send their requests to Transport Malta, which then publishes an announcement. Transport Malta has the power to overturn decisions by Local Councils on this matter. Some operators have referred to cases where unnecessary constraints have been imposed by Local Councils when seeking authorisation to dig up roads. However, no formal complaint about alleged abuses by Local Councils has been filed.

Administrative charges

Several operators complained about the level of administrative charges imposed on them. Specifically, an issue was raised in relation to the important costs that operators would have to bear to cover the payment of an upgrade to the security service's legal interception equipment. As a general rule, any surplus from the administrative charges collected is refunded back to operators.

THE CONSUMER INTEREST

Consumer complaints

Between January and October 2010, the MCA received 136 complaints regarding electronic communications, predominantly linked to the mobile and TV sectors. In addition, the Consumers Association recently received a number of complaints related to contract terms and billing conditions imposed by operators, to the lack of information provided and to

restrictions to switching operator. Other common complaints received were also related to the failure to provide the Internet speeds stipulated in the contract.

Tariff transparency and quality of service

The MCA has continued to update and enhance the information available to consumers via its website. In 2010, the Authority distributed a consolidated booklet to every household which provides consumer information on all electronic communication services.

The draft Bill transposing the revised EU regulatory framework also contains new provisions, which are not linked to the transposition and are aimed at further strengthening end-users' rights. In particular, one of these provisions requires operators to include a minimum list of service quality levels in the contract. Operators have commented on these new requirements in the consultation process.

Number portability

The average time for porting remained unchanged at one day for mobile numbers and five for fixed numbers. In March 2010, the MCA reviewed its decision on number portability. It introduced the possibility for the donor operator to charge for unsuccessful number portings. It also included a significant revision of the number portability wholesale charges. The new charges applicable for each successful porting are €1.35 for a personal prepaid mobile number, €2.25 for a personal post paid mobile number and €3.45 for the porting of a personal fixed number. The number of fixed and mobile portings registered substantial growth in 2010.

One operator complained that switching is made difficult for the consumer because of general tie-ins of 24 months and because of a lack of clarity about the possibility to switch after this period. Another reported issue concerned the obstacles to switching a fixed line from the fixed incumbent when broadband is also provided on that line.

Moreover, in order to facilitate switching, an innovative decision regarding e-mail portability was taken by the MCA in 2010, under which operators are required to forward emails sent to previous email addresses to the new addresses. This service should be provided for free during an initial period after which the possibility should still be offered against a payment.

Net neutrality

No development was reported and no discussion is currently taking place on this issue.

Universal service

In April 2010, the MCA finalised a detailed review of the scope of universal service obligations. The main purpose of this decision was to re-establish the individual universal service obligations and their respective designations. In line with the current EU framework, different undertakings may provide different elements of the universal service. It also addresses the financing and designation processes and criteria for the universal service obligations. With respect to the scope of universal service, the MCA decided to retain a printed directory as part of the essential services. The fixed incumbent, which was previously designated by the MCA as the Universal Service Provider (USP), has filed an appeal against this Universal Service decision.

As a result of the calls for expression of interest that were issued with the new Universal Service decision, the fixed incumbent has remained the designated undertaking for almost all

the elements of the universal service obligations, except for the provision of a printed and comprehensive electronic directory. For these services, the designation processes are ongoing.

Furthermore, in September 2010, the MCA launched a consultation on a possible extension of the scope of universal service with regard to functional Internet access. This consultation is seeking stakeholders' views on the MCA's project to include within the scope of universal service obligations the provision of broadband connections permitting a minimum speed of 4 Mbps. This speed level was set on the basis of the criteria of prevailing bandwidth used by the majority of subscribers and technological feasibility. The currently designated USP objected strongly to this proposal.

European emergency number 112

Shortcomings were reported in 2009, specifically concerning the provision of caller location information and the allegedly high number of unanswered calls. According to the authorities, progress has been made to ensure that the requirements relating to the provision of caller location information are met. In addition, measures have been taken over the course of 2010 to improve the functioning of 112, such as increasing the number of dedicated human resources and lines, and the development of a new software system to monitor the call handling process. The Commission is closely following the progress of the implementation of these new procedures and technological upgrades, as well as their effective impact on the functioning of the system. Further improvements are also being examined by the authorities, in light of the stricter requirements imposed by the revised EU telecom rules.

In January 2011, awareness of 112 as the national emergency number has increased in Malta to 56% (+14 percentage points compared to 2010)². However, despite recent public promotion initiatives, this result is still by far the lowest amongst the countries that have 112 as their main emergency number. In addition, awareness of 112 as the Europe-wide number in Malta is 20%, only up by one percentage point compared to last year and still below the EU average (26%).

Harmonised numbers for harmonised services of social value (116)

A register is currently being maintained on the MCA website and is available to the general public. This includes a list of all the reserved Harmonised European Short Code numbers, a service description for each of them and a list of those currently in service, namely 116000 and 116123.

Must carry

As part of the selection process for the stations that will become General Interest Objective stations and will be carried on a free-to-air basis on the digital multiplex platform operated by PBS Ltd, the Broadcasting Authority launched a consultation on the eligibility criteria that are being proposed for the selection of these stations.

² See Flash Eurobarometer survey on 112 (2011)
<http://ec.europa.eu/112>

e-Privacy

Data Protection falls under the competence of the Ministry of Justice. The e-Privacy Directive will be transposed in a separate process, under both the Data Protection Act and the Electronic Communications Act.