

## **Malta's Comments on the Commission's draft Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU**

Malta would like to thank the EU Commission for the opportunity to give its feedback on the Commission's Draft Recommendation. In March 2008, the Commission had already forwarded a presentation to all the European National Regulatory Authority's (NRAs), which contained a high-level treatment of the salient points of the Recommendation, to which the Maltese NRA had sent its preliminary feedback. After reading the full draft, Malta notes that the same areas of reservations expressed by the Maltese NRA still remain in the current form of the Recommendation. For this reason, Malta feels that it should elaborate on the same points.

### *General agreement with reservations*

Malta welcomes the Commission's drive towards lower termination rates, its views in favour of symmetry, as well as its drive to narrow as much as possible the list of objective justifications for the persistence of asymmetry. This notwithstanding, Malta would like to express its reservations on some points as follows.

### *Applicability of recommended cost model*

The Recommendation clearly favours a pure long-run incremental costs (LRIC) model to estimate the applicable termination rates for both fixed and mobile markets. In this recommended model, the increment is defined as the terminating interconnection traffic originating from third parties. Although Malta understands that such a model will invariably achieve very low termination rates, this proposed approach represents a considerable shift from prevalent regulatory practices. This may, therefore, entail added regulatory cost for both NRA and operators in each Member State in an effort to be compliant with the Recommendation.

These costs are relatively higher, the smaller the scale of a given market. Since the Recommendation implies that all Member States would be required to develop such a model irrespective of the cost and resources involved in doing so, Malta feels that such a requirement is too stringent and does not guarantee the best outcome from a cost / benefit perspective.

In this regard, although the Recommendation (Recital 20) acknowledges the possibility of lack of resources to implement the proposed cost model in a timely manner, it recommends the use of alternative measures only as an interim solution bounded with a time limit up to 31 December 2013 and subject to a number of additional qualifiers.

Malta strongly feels that alternative methods, such as the use of reference rates, are capable of achieving permanent efficient outcomes. For this reason, Malta urges the Commission to recognise explicitly the relevance of reference rates as a tool *per se* when the competent national

Authority deems that the regulatory costs involved in developing such model would exceed the benefits derived from them. This is particularly the case when considering the regulation of small markets or small operators. Malta's view on the subject is reinforced by the successful use of such a tool in prior Recommendations issued by the Commission, such as that on fixed interconnection rates and leased lines.

*Impact on the regulation of origination services*

Although the scope of the Recommendation is limited to termination services, Malta feels that its possible impact on the regulation of origination services merits some treatment in the response. This is particularly relevant in the context of using the same recommended concepts when regulating origination charges used by, for example, carrier pre-selection and carrier selection (CPS/CS) operators.

This is because in circumstances where both termination and origination services are subject to cost orientation remedies (particularly for fixed networks) the size of the chosen increment may become unclear since the pure LRIC of both services considered together would likely be greater than the sum of the pure LRIC of the two services considered individually.

*Long-term perspective*

Malta is also concerned that the Recommendation may lack a sufficiently coherent long-term perspective on the regulation of termination services in Europe. Malta feels that such a Recommendation ought to give clear long-term regulatory vision; however, it is of the opinion that this cannot be achieved unless the Commission undertakes an exhaustive feasibility study of all the possible alternative regulatory frameworks. On the contrary, the Recommendation is suggesting a costly paradigm shift in the regulatory models used at present, the outcomes of which may be replicated by a simpler and more efficient regulatory regime at some point in the future.

In conclusion, Malta would like to thank the European Commission for the opportunity to submit its feedback on such an important topic, and trusts that the Commission will intensify its consultative efforts with all the stakeholders involved, and looks forward to see its views reflected in the final version of this Recommendation.