

EXAMPLES OF INFRASTRUCTURE SHARING FROM MALTA

The electronic communications market in Malta presents peculiarities due to its micro size and consequently the economic principles that are valid for larger countries may not necessarily be applicable *verbatim* in Malta. In the light of this, whilst the **traditional** concepts of access and interconnection have been given full force, as mandated by the European Directives¹, other more **innovative** forms of infrastructure sharing, such as facility or site sharing, have not actually been mandated, due to the fact that the Malta Communications Authority has felt that the imposition of such obligations would be too onerous on the operators, *vis a vis* the benefits which such measures may have within the micro market.

Most innovative forms of infrastructure sharing have therefore been left up to negotiation between the parties at the current time. This notwithstanding, the Malta Communications Authority keeps close watch on the market and shall mandate those forms of infrastructure sharing as required from time to time.

1. PASSIVE AND ACTIVE INFRASTRUCTURE SHARING

Aside from the comments made above, some initial steps towards mandated infrastructure sharing have been made in the mobile communications sector. After carrying out the necessary market analysis on wholesale access and call origination on mobile networks², the following obligations were imposed upon GO Mobile p.l.c. and Vodafone Malta p.l.c., which were found to enjoy joint dominance in the market:

- **National Roaming**

The Malta Communications Authority was of the opinion that the introduction of national roaming would promote competition at the retail and wholesale level, as this allows new entrants to provide an equivalent mobile service in terms of mobile network coverage. This would also promote the interests of consumers by increasing the level of competition in the retail and wholesale markets. For this reason, the Authority decided that the scope of the access obligation imposed on the two dominant operators should include the provision of national roaming. However this has not been resorted to in practice.

- **Mobile Virtual Network Operators (MVNOs):**

The Malta Communications Authority was of the view that full MVNO³ access would both stimulate investment in infrastructure and have a beneficial impact in the short term on competition in the retail market. Even though the setting up of a full MVNO requires considerable costs, such costs are significantly lower than those necessary for the setting up of an independent mobile network. The option to avail itself of MVNO access may give a new entrant the opportunity to rollout over an extended period of time. This would allow new entrants to be more competitive during the rollout period. To the potential operator, MVNO access may also be advantageous over national roaming, since MVNO access does not require extensive investments in one's own radio network. Furthermore,

¹ Directive 2002/21/EC (Framework Directive); Directive 2002/20/EC (Authorisation Directive); Directive 2002/19/EC (Access Directive); Directive 2002/22/EC (Universal Service Directive).

² Wholesale Access and Call Origination on Mobile Networks Identification and Analysis of Markets, Determination of Market Power and Setting of SMP Conditions: Response to Consultation Document and Final Decision (21st November 2006).

³ A full MVNO is one the organisation operates a physical network infrastructure comprising, at a minimum, a mobile switching centre, an HLR and authentication centre (or 3G mobile equivalents). A full MVNO has its own International Mobile Subscriber Identity Code (IMSI code), its own network code, issues its own SIM cards (or 3G mobile equivalents) and offers its own services to end users. As a result, this MVNO model would have its own national and international roaming agreements, as well as its own interconnection agreements. In this case, however, the service provider is not allocated its own radio spectrum and therefore uses the radio access network of one or more Mobile Network Operators.

contrary to the service provider model, a potential full MVNO operator will have greater flexibility to respond to the market by the setting of its own retail pricings and by its ability to determine its own termination rates and interconnection conditions.

On the basis of the above, the Malta Communications Authority directed that the access obligation should be applicable to the provision of access for full MVNOs. However the Authority was of the opinion that the scope of the access obligation should not, at this stage, extend to service providers that do not qualify as full MVNOs. Any such potential operators therefore have to acquire access on the basis of commercial negotiations. Nonetheless, the Authority is monitoring the market carefully and if necessary, shall consider extending the scope of the access obligation.

2. OPEN ACCESS TO INTERNATIONAL CAPACITY:

The Malta Communications Authority has not imposed open access to the international leased lines owned by GO p.l.c. and Vodafone Malta p.l.c. as this is deemed too onerous an obligation to be placed on either of the operators. The form of access imposed upon GO p.l.c. is to the extent that sufficient access must be offered to GO's international leased lines to ensure end-to-end connectivity. Such access is subject to price controls and to the general requirement of non-discrimination and transparency. This form of access is however a form of imposed 'carriage' rather than the actual sharing of infrastructure whereby the cables are actually physically leased, as is the case with open access.⁴

It is pertinent to note that no form of access obligation was imposed upon Vodafone Malta p.l.c. due to the fact that, even though this operator also owns international leased lines, no demand for access has been made to it to date.

3. HARMONIZED AND REGIONAL POLICY AND REGULATORY APPROACHES TO SHARING

Malta' regulation and policy in electronic communications is governed by the European Directives as mentioned above. The Directives mandate access, which is defined as:

'the making available of facilities and/ or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services; access to virtual network services'.⁵

The extent to which such access is mandated is however left to the discretion of the regulator in each Member State. For the reasons explained above, Malta has to date abided by traditional forms of mandated access, and has for the most part allowed the more innovative forms of infrastructure sharing to form part of commercial negotiation.

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⁴ Retail Leased Lines, Wholesale Terminating Segments and Wholesale Trunk Segments of Leased Lines Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies: Response to Consultation and Final Decision (16th August 2006).

⁵ Article 2(a): Directive 2002/19/EC (Access Directive)