

Malta

1. DIGITAL AGENDA TARGETS AND ECONOMIC INDICATORS

Broadband Indicators (January 2014)¹					
	Speed	Malta		EU Average	
		Percentage (in %)	Growth (in %) ²	Percentage (in %)	Growth (in %)
Fixed broadband coverage ³	From 144 Kbps	100,0	0	97,1	2
	NGA ⁴	99,9	0	61,8	15
Fixed broadband penetration ⁵	From 144 Kbps	34,1	6	29,9	4
	From 30 Mbps	4,7	840	6,3	47
	From 100	0,2	0	1,6	78
Mobile broadband coverage	Basic (HSPA)	100,0	0	97,1	1
	LTE	0,0	N/A	58,9	125
Mobile broadband penetration		50,7	-12	61,1%	5%

Malta has already achieved the first two of the Digital Agenda for Europe (DAE) targets related to broadband, i.e. 100% basic broadband coverage by 2013 and 30 Mbps broadband coverage by 2020. The first DAE target "basic broadband" has already been reached since 100% of the Maltese territory is covered by basic broadband access (in terms of both fixed and mobile technologies). Spectrum licenses have included an obligation for nation-wide coverage, and since 2011 a minimum broadband data rate of 4 Mbps has to be provided as part of the fixed location access universal service obligation. The second DAE target has been reached given that broadband speeds of up to 100Mbps are provided on a nation-wide scale.

In 2013 the fixed broadband penetration reached nearly 141 thousands lines in Malta. Fixed broadband coverage is nation-wide. Fixed broadband penetration (lines per 100 inhabitants) in Malta increased by 1.6 percentage points over the past twelve months and reached 33.8 % in July 2013. This is still above the EU average of 29.4% in January 2014.

Vodafone is the only operator currently offering 4G services since October 2013.

¹ The figures in this table have been provided by Malta to the European Commission via the EU Communications Committee (COCOM) for the Scoreboard of the Digital Agenda for Europe. For more information see <http://ec.europa.eu/digital-agenda/> and <http://ec.europa.eu/digital-agenda/en/scoreboard>.

² Increase over the figure of a year earlier, expressed as a percentage. E.g. if there has been an increase from 20% in January 2013 to 30% in January 2014, that would be a 50% growth.

³ Coverage is the availability of the network for those who want to subscribe to the service, as % of the population. See also the Glossary. Coverage data is from December 2013.

⁴ NGA fixed broadband includes FttH, FttB, FttO, VDSL, Cable with Docsis 3.0 or higher, and other NGA. See also the Glossary.

⁵ Penetration is the number of subscribed lines per 100 inhabitants. See the Glossary for a more detailed explanation.

2. COMPETITIVENESS IN THE SECTOR

Revenues and investment in the electronic communications sector			
	2010	2011	2012
Revenues	€0,238 billion	€0,236 billion	€0,236 billion
Growth	N/A	-0,5%	-0,2%
Investment	€0,039 billion	€0,040 billion	€0,034 billion
Growth	N/A	3,7%	-15,0%

The telecoms sector is dominated by three companies: GO (fixed telephony incumbent), Melita (cable TV incumbent) and Vodafone (mobile–telephony incumbent). The Maltese market has unique characteristics, with two fixed nation-wide competing infrastructures, three mobile networks and an unregulated wholesale broadband access market due to the similar market positions of GO and Melita.

Over the past two year, the revenues in the electronic communications sector have slightly decreased from 238 million in 2010 to 236 million in 2012 which is in line with the general trend in the EU. Investment in the sector has decreased from €40 million in 2011 to €34 million in 2012. While investment in the mobile market has slightly increased from 14 million in 2011 to 16 million in 2012, investment in the fixed market has significantly decreased from 26 million to 17 million over the same period. Nevertheless the NGA coverage with 99,9 percent is one of the highest in the EU.

3. MARKET DEVELOPMENTS

Bundled offers are on the rise with Go and Melita increasingly competing with quad-play offers. The spectrum interference from Italy over the last few years impacted negatively the quality of service of GO's television service. In Malta this is a very competitive market.

Over its copper DSL infrastructure (with a market share of 49%), GO provides broadband connections with download speeds ranging from 4Mbit/s to 35Mbit/s. GO has upgraded around 75% of cabinets to fibre (FTTC). In October 2012, GO launched an FTTH service (offering speeds up to 200Mbps) in a very small geographic area under the brand name 'Rapido'; however, so far GO has not made any significant progress on any further FTTH deployment.

Melita operates a DOCSIS3.0 network and offers on the market download speeds from 30Mbps to 100Mbps. It is currently upgrading its existing broadband customer base to a minimum of 30Mbps. Melita is also offering a high speed mobile data product based on Wi-Fi, utilising both Melita hot-spots in main public areas and home modems re-programmed to provide mobile data coverage to Melita mobile subscribers.

Other Internet Service Providers (ISPs) also provide broadband using a number of different infrastructures such as operation of an unlicensed WiMAX band, Wifi, and in case of the government's own ISP via an agreement for wholesale access services with Melita and GO.

However, the fixed incumbent (GO) and the cable TV incumbent (Melita) are the largest operators in the broadband market with a collective market share of 96.86% where Melita has recently gained slightly more market shares (with 48.54%) than GO (48.33%) as of Q2 2013. In the fixed broadband market, consumer choice is effectively limited to offers by those two

operators sharing the market. Vodafone has stopped marketing its service in 2011 but still provides fixed wireless broadband to larger companies building its own infrastructure if necessary.

The competition for services rendered to businesses is fierce; GO, Melita and Vodafone target the business segment with standard packages (based on bundles and single services), but also with tailor-made products to suit the individual needs of businesses.

In the mobile market, the main operator (Vodafone) retained its strong position, with a 48.91% market share in the third quarter of 2013. In October 2013, Vodafone launched the first – and currently only – 4G commercial service in certain areas of Malta with the intention to nation-wide coverage later on. Since Melita entered the market in 2009, its market share has slowly grown reaching a market share of 13.17% in the third quarter of 2013. Due to this market entry, the average per minute rate of a domestic call has considerably gone down..

In the fixed voice market, GO and Melita remain the largest operators in terms of subscribers collectively sharing 99.4% of the market. The incumbent (GO)'s market share for fixed direct access lines is declining over the last years but remains high at 69.88% in Q3 2013.

However, fixed access connections are declining year on year albeit at a very slow pace. Even though more than 41% of households have a triple or quad play bundle which includes a fixed access line, fixed minutes and calls have been declining steadily and at a significant rate over the past few years. At the end of 2013 around 73% of all voice calls were originated over mobile networks rather than fixed. Similarly mobile minutes have largely exceeded fixed originated minutes. As mobile prices continue to fall this trend is likely to continue to be observed with increased fixed-to-mobile substitution, at least in terms of usage.

VoIP has been available in Malta since 2004 mainly for international calls. Today practically all fixed originated local and international traffic in Malta is IP based. However the latest consumer perceptions survey indicates that their use has not impacted significantly the use of fixed telephony services.

4. MARKET REGULATION

In March 2013, the Malta Communications Authority (MCA, see section 6.1 below) published two decisions related to market reviews of the wholesale unbundled infrastructure access (Market 4, where GO has SMP) and of the wholesale broadband access market (Market 5 unregulated since GO and Melita hold similar market positions).

GO has appealed against the MCA decision on market 4 and the appeal is in its final stages. In the interim the original decision published by the MCA in March 2013 remains effective in its entirety. Therefore, given that GO has publicly announced that it is in the process of deploying an FTTH network, GO has been required to provide access under a VULA arrangement and will be expected to submit a Reference Offer for fibre-based wholesale products to the MCA by the 30th of June 2014. In the interim, any undertaking has the right to seek access under commercial terms.

In terms of NGA-related Recommendations, GO stated that the future investment (and consequently roll-out) of its FTTH network is conditional on the wholesale regulatory conditions that will be prescribed in Malta.

Following the publication of the decision in February 2012 concerning the retail fixed access market (market 1), Melita appealed part of the decision related to the measures against unreasonable bundling and stated that the MCA should be carrying out a margin squeeze test on both the regulate product (fixed access products) and also unregulated products within the bundle (such as broadband, TV and mobile). The Appeals Tribunal partially upheld Melita's request. The MCA filed a counter appeal in the Upper Court against this judgment. Pending a final decision of the Court the original MCA's decision published in Feb 2012 remains effective in its entirety.

In terms of termination rates, Vodafone has shown strong reservations on the implementation of the Pure-LRIC-based mobile termination rate (MTR)' regulation decided by the MCA, whilst Melita has made strong representations that new Pure-LRIC-based MTRs are long overdue and are critical for competition in the market. In March 2014, MCA has notified its decision on market 7 (Wholesale Termination on mobile networks) to the Commission applying a Pure-LRIC-based approach as well as its decision on wholesale termination on fixed networks (market 3). Vodafone has appealed against the MCA decision on market 7 in April 2014.

Between January 2012 and February 2014 the following regulatory decisions were taken by the MCA: Access to public telephone networks at a fixed location in Q1/2012; Must carry obligations: designation of obligations on providers of networks used for television and radio distribution services (Q1 / 2012); Interim review of wholesale Mobile Termination Rate in Q2/2012; Assignment of spectrum in the 3400 – 3800 MHz band in Q2 / 2012; Information to be included in subscriber contracts in Q3/2012; Wholesale access and call origination on mobile networks (Market 7) in Q3 / 2012; Wholesale leased lines market (Market 6) in Q4/2012; Estimating the cost of capital (WACC Review) in Q4 2012; Review of fixed network pricing (BUCM) in Q4/2012; Broadband Internet Quality of Service framework in Q1/2013; Wholesale broadband access markets (Markets 4 & 5) in Q1 / 2013; Pricing of leased lines and Ethernet connection Q3 / 2013; Review of must carry obligations in Q3/2013; and Itemised billing in Q1/2014.

The MCA plans to continue reviewing the markets every 3 years.

5. BROADBAND PLANS AND FINANCING

After a wide public consultation the Government launched the Digital Malta⁶, a national ICT Strategy covering the period 2014-2020, on 24 March 2014. The strategy aims at transforming Malta into a digitally-enabled nation. Besides national policy direction, it includes more than seventy measures tackling various issues. Among them is the need for developing online content, citizen engagement, support for start-ups, portable devices for children, safer internet, cloud computing, open innovation, ICT innovation in public procurement, eHealth,

⁶ www.digitalmalta.gov.mt

eLearning, “one face to government”, digital by default legislation, e-democracy, cross-border interoperability, eCompetence frameworks and ICT educational programmes.

One of the objectives is also to facilitate the deployment of Next Generation Access networks in Malta. The Government shows an interest in deployment of a nationwide open-access FTTH network based on co-investment and government subsidies. In 2012-2013, the government reviewed FTTH expressions of interest submissions and sought EU funding as well as prepared necessary documentation for State Aid Approval. In November 2012, the Maltese State Aid Monitoring Board submitted to DG Competition a background paper on its FTTH plans.

6. INSTITUTIONAL ISSUES

6.1. The National Regulatory Authority

The Malta Communications Authority (MCA) is the independent NRA in terms of the Electronic Communications Framework and is vested with the main regulatory tasks. Besides that, the MCA regulates eCommerce and the postal sector, and is also responsible for elements of the national ICT strategy such as eInclusion, Internet safety and Internet governance.

There were no changes with regard to the status of the MCA. However following an intervention of the EU Commission in 2013, the legal provisions concerning the removal from office of the members of the board of the MCA have been amended⁷. The Broadcasting Authority is the authority responsible for monitoring and regulating all Radio and Television broadcasts originating from the Maltese Islands. In 2012, the Malta Competition and Consumer Affairs Authority (MCCAA) was established to promote competition (including by ex post market regulation) and to safeguard the interests of consumers. Since there is no clear separation of competency, a consumer may bring forward a complaint related to electronic communications issues to the MCA or the Office for Consumer Affairs of the MCCAA or both; in the latter case both authorities have to individually deal with the same complaint. In cases where consumer claim compensation for damages suffered, they have the option to go to the Consumer Claims Tribunal. In this case it is mandatory to go to the Office for Consumer Affairs (MCCAA) first even if the MCA has already dealt with the complaint.

Since June 2012, all new appeals are heard before the Administrative Review Tribunal presided by a Magistrate assisted by two lay experts, thereby replacing the existing Communications Appeals Board. However, outstanding appeals adjourned for a decision since June 2012, are still to be determined by the Communications Appeals Board for which the Maltese government is trying to find a solution.

There were two appeals in 2012 and one in 2013. Two decisions were taken by the Administrative Review Tribunal in a timely and efficient manner, one of which is being contested by the MCA before the Court of Appeal (see above).

⁷ See parliamentary adoption process: <http://www.parlament.mt/billdetails?bid=457&l=1&legcat=13>

Resources⁸ of the Malta Communications Authority (MCA)			
	2011	2012	2013
Personnel ⁹	67	65	66
Increase/Decrease	[...] %	[...] %	[...] %
Budget	€ [...] Million	€ [...] Million	€ 2,874,708
Increase	[...] %	[...] %	[...] %
Administrative charges ¹⁰	€ 3.19 Million	€ 3.17 Million	€ 3.27 Million
Administrative costs ¹¹	€ 2.55 Million	€ 2.94 Million	N/A

Administrative charges are collected by the MCA from providers of electronic communications services to recover the actual administrative costs for those regulatory activities. At the end of each year, any surplus of administrative charges collected over the calculated expenses is refunded back to the providers.

The Malta Information Technology Agency (MITA) is not a regulatory authority, but is a Government agency that intervenes in the areas of Information and Communications Technology (ICT) policy and implementation of IT programmes and initiatives across Government.

6.2. Authorisation

The Commission has not raised concerns on the implementation of the general authorisation regime.

In a decision issued in June 2012, the Government has decided that as from 1st January 2012 it will be funding itself the Legal Intercept System which previously was funded by the telecom operators. Operators have collectively contested the charges imposed on them. The operators will now only bear those costs associated with their own interface systems which connect their network to the Legal Intercept system.

6.3. Taxation

In the reporting period no additional taxes have been imposed on operators of the sector in view of the fact that they provide electronic communications services.

In March 2014, the Maltese Constitutional Court decided a case filed by two of the major mobile operators following the introduction of a 3% excise duty on mobile telephony services in 2005. This decision followed a reference for a preliminary ruling by the Court of Justice of the European Union. The Constitutional Court upheld the Maltese Government's position.

⁸ For the tasks concerning the electronic communication sector.

⁹ Number of staff in full time equivalents (fte).

¹⁰ In the sense of Art. 12 of the Authorisation Directive (Directive 2002/20/EC as amended by Directive 2009/140/EC).

¹¹ Idem.

7. SPECTRUM MANAGEMENT

In view of the exceptional circumstances due to spectrum interference from Italy, Malta has filed a request for derogation from the application of Article 6(4) RSPP with regard to the assignment of the 800MHz band till end 2015. The Commission issued a decision in July 2013 granting a derogation till mid-2014 for the carrying out of the authorization process and until 31 December 2014 for the actual use of the spectrum. Despite that, Malta is committed to ensure all possible preparatory steps for the action are being taken as soon as possible.

Significant improvement on the level of spectrum interference from Italy has been reported by the Maltese authorities and concerned operator GO due to the discussions in the Radio Spectrum Working Group in cooperation with the Commission to ensure that television channels 38, 56, 58, 60 and 66 are actually free from any harmful interference, which is currently the case. However, while the interference caused by Italian local stations operating on Malta's channels 28, 31 and 45 Malta has improved, the remaining level of interference is not considered adequate to safeguard local transmissions. Therefore, Malta continues to monitor the broadcasting spectrum on a regular basis, and is benefitting from the good offices support from the RSGM Working Group on cross-border interference. After the summer the Italian authorities are committed to report on the effective implementation of their national solutions.

However, in order to be able to free the 800 MHz band from broadcasting activities, the Maltese authorities still have to move broadcasting from its channel 66 to a new lower channel (i.e. Channel 43). Such move will be possible based on a guarantee by Italy that the channel will be cleared from all interference and subject to successful international coordination with neighboring countries.

The UHF Band is currently used by GO for its terrestrial television operations. Three of these channels are in the 700 MHz band. Terrestrial television has high viewership and provides competition in the market. Malta intends to continue using the UHF for broadcasting and would need to co-ordinate replacement channels, should the 700 MHz be transferred for mobile use.

In 2011, the entire spectrum in the 900 MHz and 1800 MHz (except the 60 MHz which were not applied for) have been assigned to Melita, Mobisle Communications (GO) and Vodafone allowing the deployment of GSM, UMTS, LTE and WiMax. Currently Melita operates 3G mobile services in these bands, GO operates GSM and 3G, while Vodafone has in addition to its GSM and 3G operations recently launched 4G services in the 1800 MHz band.

Digital switch-over was completed on 31 October 2011 with the switching off of the analogue broadcasts. The 2 GHz band was assigned for 3G services in 2005 and 2007. The 2.6 and 3.4-3.8 GHz bands are available, however there is a lack of market demand.

8. RIGHTS OF WAY AND ACCESS TO PASSIVE INFRASTRUCTURE

Transport Malta is the competent authority for granting rights of way. Permits for trenching works are the responsibility of Transport Malta. Permits for road works are processed via an automated system. All decisions are public. Requests are submitted electronically. The procedures for granting rights of way can be burdensome in terms of duration, interaction and

finding an agreement with landlords. Therefore, the MCA is currently conducting an investigation to facilitate the process between the national authorities and the operators. There were no appeals related to rights of way during 2012 and 2013.

No permits are required for base station installations that comply with the planning requirements. Rights of way over private property are dealt with on an ad hoc basis.

Telecoms facility sharing falls within the MCA's competence. Cross-utility infrastructure sharing has already been in place on a commercial basis for a while.

NGA wiring is not mandatory for new buildings. However, an "in-house wiring project" is underway with a public consultation on proposed minimum 'in-building' infrastructural requirements planned for 2014.

9. ACCESS AND INTERCONNECTION

In the latter part of 2013 a new fixed line operator 'Vanilla' entered the market. Since this service provider opted for an IP interconnection solution (IPX), and the standard interconnection protocol for telephony in Malta is SS7, it opted to use transit operators to convey its traffic.

10. CONSUMERS ISSUES

10.1. The European emergency number 112

The 112 number is the only emergency number in Malta and all emergency services can be contacted via 112. The call centre is currently being hosted by the Malta Police, within the Police General Headquarters. The Malta Police has embarked upon a total quality management approach, where the benchmarks are set for 0-10 seconds to take the call. Hoax calls are all investigated and abusers are brought to court in this respect.

To raise awareness of the 112 emergency number there is a continuous education campaign using posters placed in strategic locations, such as points of entry (airport/seaport) and public transport hubs and vehicles, as well as adverts placed on local electronic media, radio and TV stations.

10.2. Number portability

The length of time to port fixed and mobile numbers is effectively one working day. Since May 2011, service providers are required to provide subscribers with email mobility services. This service gives subscribers the opportunity to request, upon termination of an internet service, the forwarding of any electronic mail received on the original e-mail address to the new e-mail address, free of charge, for a period of one (1) year.¹²

¹² This switching facility service is similar to the one proposed by the European Commission in its proposed Regulation – COM(2013)627 of 11 September 2013.

10.3. Contractual obligations

Apart from 24-month contracts, in the past months a number of electronic communications service providers have voluntarily offered post-paid bundled and standalone packages for a minimum contractual period of 12 months or less. In effect, all electronic communications service providers voluntarily make available services to consumers (i.e. mobile, fixed, TV and internet services) on a standalone basis for a minimum contractual period of 12 months or less.

In the majority of cases, services are also available on an indefinite basis. Subscribers have then the right to terminate their contract at any time subject to any prior notice not exceeding one month. Any unutilised advance payment or deposit on terminal equipment have to be promptly refunded (with no extra charge) to the subscriber upon termination. Furthermore, national law stipulates that no termination charges shall apply with respect to contracts that have been renewed after an initial contract period has expired.

Malta had also introduced a legal provision similar to the one proposed by the European Commission in its proposed Regulation laying down measures to achieve a Single Telecoms Market¹³, wherein service providers may seek for a waiver from the Authority from the obligation to provide subscribers with the option to terminate their contracts without penalty in cases where such proposed changes are manifestly positive. This has resulted in a number of positive changes to subscriber contracts.

By means of a decision¹⁴, the MCA issued a number of implementing requirements to be followed by service providers for the better protection of end-users contractual rights. These include specific requirements related to physical and electronic contracts and to the accessibility of product terms and conditions.

10.4. Other consumer issues

In December 2012, MCA launched an interactive comparison portal¹⁵ comparing tariff plans for fixed and mobile telephony, broadband services and bundled services for telephony, internet and TV).

Concerning cost control mechanism, all mobile operators provide SMS and/or call enquiry services which provide updated information on the usage made by the subscriber. In this context, it has to be noted that more than 79% of the contracts in the mobile market are prepaid.

The complaints received during 2013, related predominantly to provision and quality of service/s, termination of service/s and non-payment of bills. In light of these complaints, the MCA reviewed the termination procedures applied by service providers to ensure that these are reasonable and practical.

¹³ Article 28(4) of the proposed Regulation – COM(2013)627 of 11 September 2013.

¹⁴ <https://www.mca.org.mt/sites/default/files/attachments/decisions/2012/2012-09-subscriber-contracts-final-decision%20%28amended%20version%29.pdf>

¹⁵ www.telecosts.com

In 2013, a number of providers introduced a new mechanism for early termination, whereby subscribers are only requested to refund a pro-rata charge for any promotions given (together with the refund of any subsidised equipment provided) irrespective of when the subscriber terminates his service during the initial contractual period. One should also note that Maltese law requires that no termination charges apply with respect to contracts that have been renewed after an initial contract period has expired.

On the 3rd January, 2014, the MCA published a decision on the provision of itemised bills in the fixed and mobile telephony sectors, including special rights for elderly and dis-abled end-users.

11. UNIVERSAL SERVICE

The following services are included in the scope of universal service in Malta: the provision of access at a fixed location, directory enquiry service and written directory, public payphones, specific measures for disabled users, reduced tariff options for users, and ensuring that users can control expenditure. The fixed incumbent Go has been designated as the universal service provider.

As of 1 August 2011, the scope of universal service obligations has been extended to include a connection capable of supporting functional internet access at a guaranteed access line speed of 4 Mbps; in these exceptional cases, the access line speed must not be lower than 2 Mbps.¹⁶

The MCA will shortly be issuing a new public consultation on the review of universal service obligations and subsequent designation of responsible providers.

The MCA is in the final process of assessing the first universal service compensation claim made by GO. In this context, MCA is planning to issue a public consultation including a summary of the auditor's findings. After finalising and issuing a decision on the calculation phase, the MCA will consult on the source of funds and the structure of any eventual financing sharing mechanism.

12. NET NEUTRALITY

12.1. Legislative situation

No specific legal provisions on net neutrality are currently in place in Malta and no complaints in this matter have been brought to the authorities' attention. However, in autumn 2012, the Government conducted a public consultation on a White Paper¹⁷ on the introduction of digital rights in a non-binding part of the Constitution.

¹⁶ <http://www.mca.org.mt/sites/default/files/articles/BB%2520USO%2520Decision%2520Notice%2520-%2520Published%25201st%2520June%25202011%2520-%2520Final%5B1%5D.pdf>

¹⁷ <http://gov.mt/en/Government/Press%20Releases/Documents/pr2223a.pdf>

12.2. Quality of service

The MCA is responsible for quality of service implementation and the monitoring of the quality of service in the sector, and specific aspects such as internet speed and other parameters.

In February 2013, the MCA published a decision¹⁸ on 'Quality of Service Framework for Broadband Internet' obliging internet service providers to publish quarterly reports¹⁹ and information on quality of service such as attained speed, latency, packet loss and availability of service for each product they have on offer. With regard to speed, the “up to” clause in broadband service contract has to be replaced by range of speeds the service provider will be committed to meet. In addition, the Decision stipulates a number a requirements of how the measurements are to be carried out by the ISP to ensure comparability between service providers.

The Decision also requires ISPs to include the expected upper and lower speed expectations on the access network, known also a Typical Speed Range, in new contracts. The Decision stipulates also how the Typical Speed Range is to be calculated to ensure comparability between service providers.

¹⁸ <http://www.mca.org.mt/consumer/decisions/broadband-internet-quality-service-framework>

¹⁹ These Quality of Service reports are expected to be published as from the 2nd quarter 2014.