L.N. 321 of 2002

TELECOMMUNICATIONS (REGULATION) ACT (CAP. 399)

Publication of a Directive by the Malta Communications Authority

THE Malta Communications Authority (hereinafter referred to as "the Authority") is hereby publishing the following Directive for the purposes of the Telecommunications (Regulation) Act and of the Telecommunications Services (General) Regulations.

"Directive by the Malta Communications Authority

Vodafone Malta Ltd submitted two separate letters to the Authority alleging cross-subsidisation by Maltacom plc in favour of its subsidiary Mobisle Communications Ltd in the form of cross-promotion alleging this to be in breach of article 19 of the Telecommunications (Regulation) Act and of regulation 9 of the Telecommunications Services (General) Regulations. Vodafone Malta Ltd referred the matter to the Authority in terms of articles 19 and 27 of the Telecommunications (Regulation) Act, asking the Authority to investigate. In its letters Vodafone Malta Ltd referred also to Maltacom plc's Shareholders' Loyalty Scheme and Key Loyalty Scheme, and to various instances of advertising material and campaigns that Vodafone Malta Ltd alleged to be instances of cross-promotion and/or cross-subsidisation.

The Authority issued a preliminary decision dated 17th April, 2002 that was communicated to Maltacom plc, Vodafone Malta Ltd and Mobisle Communications Ltd. Subsequently Maltacom plc, Vodafone Malta Ltd and Mobisle Communications Ltd made other submissions to the Authority.

The Authority having considered all the documentation presented and submissions made and the advice of the Office of Fair Trading, determines as follows:

Cross-promotion as a result of advertising campaigns

In the course of the investigations conducted, the Authority established as a matter of fact that there is the desired level of operational independence between Maltacom plc and Mobisle Communications Ltd and that a proper system of intra-group accounting was being applied consistently thereby avoiding cross-subsidisation practices not allowed

under the Telecommunications (Regulation) Act. In reaching this conclusion the Authority established the following:

(a) Maltacom plc and Mobisle Communications Ltd have undertaken independent advertising campaigns as well as joint marketing initiatives;

(b) Inter-company transactions between Maltacom plc and Mobisle Communications Ltd are being correctly disclosed and reconciled; and

(c) Both Maltacom plc and Mobisle Communications Ltd have their own separately operating marketing departments and both engaged two independent and separate advertising agencies for their marketing and promotional activities and interactions between Maltacom plc and Mobisle Communications Ltd relating to promotional activities are carried out by the respective advertising agencies.

Key Loyalty Scheme and Shareholders' Loyalty Scheme

The Authority established that Mobisle Communications Ltd entered into standard third party agreements with Maltacom plc in respect of its participation in Maltacom's Key Loyalty Scheme and Shareholders' Loyalty Scheme respectively. The Authority established that in relation to the telecommunications sector, the only participants in these two schemes are Maltacom plc's subsidiaries.

In relation to the Key Loyalty Scheme the Authority considers this state of affairs as contrary to the principles of competition law in the telecommunications sector, particularly regulation 9 of the Telecommunications Services (General) Regulations, in that the said scheme provides for a system whereby points earned on the usage of fixed telephony services provided by Maltacom plc which currently has a monopoly for such services, can be redeemed from participants in the scheme which include Maltacom plc's subsidiaries, but which at present does not include other authorised providers in the telecommunications sector. The Authority therefore considers that the participation in this scheme should also be open to other authorised providers who are not subsidiaries of Maltacom plc.

In relation to the Shareholders' Loyalty Scheme, the Authority considers that this scheme does not violate the Telecommunications (Regulation) Act or the Telecommunications Services (General) Regulations, once eligibility for the scheme is based solely on the criteria of being a shareholder in Maltacom plc. The Authority considers that it

is only fair and reasonable for a shareholder in Maltacom plc to have an interest in the successful operations of Maltacom plc and of its subsidiaries and to enjoy the benefits of his participation.

Therefore pursuant to the Telecommunications (Regulation) Act and the Telecommunications Services (General) Regulations the Authority is making the following Directive:

1. That Maltacom plc shall ensure that the Key Loyalty Scheme is not, in relation to the telecommunications sector, exclusively limited to Maltacom plc's subsidiaries. Any authorised provider who is not a subsidiary of Maltacom plc who requests to participate in such a scheme, shall be offered the same terms and conditions as other authorised providers in the telecommunications sector already participating in the scheme, and shall not be subject to any greater or lesser rights or obligations.

2. That in the case of Mobisle Communications Ltd, in relation to telecommunications services which are regulated by or under the Telecommunications (Regulation) Act, no additional discounts in the form of redeemed points as indicated in the Key Loyalty Scheme brochure, shall be granted to its subscribers over and above those approved by the Authority.

3. This Directive shall come into force on the date of its publication in the Gazette.

Joseph V. Tabone
Chairman
Malta Communications Authority".

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