**L.N. 130 of 2001**

## TELECOMMUNICATIONS (REGULATION) ACT (CAP. 399)

**Publication of a Directive by the Malta Communications Authority**

THE Malta Communications Authority is hereby publishing the following Directive for the purposes of Article 4(5) of the Telecommunications (Regulation) Act.

### "DIRECTIVE BY MALTA COMMUNICATIONS AUTHORITY"

The Authority takes note of the fact that the shares held by Maltacom p.l.c. in Vodafone (Malta) Limited have not yet been sold and provides on the matter as follows:

The Authority has considered that:

The Telecommunications (Regulation) Act makes it the duty of the Authority to exercise the functions assigned to it under the Act in a manner that is conducive to, amongst other matters, fair competition;

The Authority is empowered by the Act to make directives as may be required for the carrying into effect of the provisions of the Act;

The various amendments to the Act made by Act No XVIII of 2000 aimed at introducing a more liberalised and competitive market scenario in the telecommunications sector which had been until then characterized by monopolies;

The process of transition to such a liberalised scenario was outlined in the Schedule to the Act entitled the "National Plan for the Reform of the Telecommunications Sector" (the "Plan");

As part of the said liberalisation process the company Mobisle Communications Limited as a subsidiary of Maltacom p.l.c. was on the 19 September 2000 granted a licence to provide public mobile telecommunications;

The said licence was granted subject to "The Telecommunications (Regulation) Act, all national laws and Regulations; and decisions of the Regulator";

As part of the process of transition from a monopolised market to a competitive market the Plan envisaged that, given its involvement in the public mobile telecommunications sector as a direct participant through its subsidiary Mobisle Communications Limited, the company Maltacom p.l.c. should no longer retain its shareholding in the company Vodafone (Malta) Limited which as from the commencement of its services became a competitor of Maltacom p.l.c. in the mobile telecommunications sector;

For that purpose the Plan stated that "Maltacom will be required to sell its Vodafone shares within six months from the date its subsidiary first provides mobile telephony services. This will bring to an end the very important right which Maltacom enjoys at present to acquire the majority shareholding of the company. It will also terminate the extensive rights which Maltacom as a minority shareholder has with regard to Vodafone's pricing policies and with regard to the running of key aspects of the company's business".

It is noted that Maltacom's right to acquire the majority shareholding in Vodafone (Malta) Limited was brought to an end by means of an "Instrument of Modification" of the 29 November 2000 issued in exercise of the powers granted under article 46 of the Telecommunications (Regulation) Act and legislated by means of Legal Notice 248 of 2000 issued on the 5 December 2000.

It is also noted that the company Maltacom p.l.c. has not in practice exercised its right to interfere in Vodafone(Malta) Limited's pricing policies and has not participated in the said company after the date when its subsidiary was granted a mobile telecommunications licence. The fear that Maltacom would exercise its rights and influence in Vodafone (Malta) Limited in an anti-competitive manner has not therefore substantially materialised and Vodafone (Malta) Limited has in fact adjusted its pricing policies according to market strategies of its own ever since the commencement of operations of Mobisle Communications Limited;

The Authority therefore considers that the aims of the Plan have been substantially achieved but that the divestiture of Maltacom's shares in Vodafone (Malta) Limited is still required for the purpose of completing the process envisaged by the Plan in the interests of strengthening of fair competition;

The Authority also notes that Maltacom p.l.c. and Vodafone Europe Limited have over the past months discussed the manner in which to organise Maltacom's exit from Vodafone (Malta) Limited. The Authority is however concerned by the fact that although the Articles of Association of the company Vodafone (Malta) Limited provide for the sale of shares if both shareholders co-operate, the parties have not been able to come to an acceptable arrangement for the sale of the shares despite the lapse of considerable time and despite the fact that both the licence of Mobisle Communications Limited and that of Vodafone (Malta) Limited are subject to the Plan which is part of the Telecommunications (Regulation) Act.

In the Authority's judgement this failure to reach an agreement is due to the lack of co-operation of both parties which are putting their interest in obtaining the most advantageous price before the genuine interests of fair competition in the market.

Given that the licence granted to Mobisle Communications Limited as a subsidiary of Maltacom p.l.c. and the licence granted to Vodafone (Malta) Limited on the 19 September 2000 are subject to the provisions of the Plan, the Authority considers that a breach of licence conditions has occurred, particularly in the case of Mobisle Communications Limited.

The Authority considers that at this stage it would not be proportionate or appropriate to revoke or suspend the licence granted to Mobisle Communications Limited particularly since such a step would go against the public interest in having a competitive market and in protecting the consumer. This view is also substantiated by the fact that in the Authority's view the company Vodafone Europe Limited has also contributed to the failure to meet the deadline by which the Maltacom shares in Vodafone (Malta) Limited were scheduled to be sold according to the Plan.

In view of the above, the Authority considers it appropriate to order, and hereby orders, the following specific measures to take effect immediately in terms of article 11 of the Telecommunications (Regulation) Act with the aim of ensuring compliance with the said aim of the Plan and condition of the licence of Mobisle Communications Limited of seeing through the sale of Maltacom's shares in Vodafone (Malta) Limited:

1. Maltacom p.l.c. shall by not later than seven days from the date of this order appoint a person acceptable to the Authority as its mandatary (hereinafter referred to as the 'mandatary') to act on its behalf in the holding and administration of its shareholding in Vodafone (Malta) Limited.

2. The said mandatary shall be empowered and appointed to act as a Director of Vodafone (Malta) Limited and to act in the interests of the said company and of all the shareholders of the same and on an arms length basis from Maltacom p.l.c.

3. Maltacom p.l.c. shall indemnify the said mandatary against any liabilities that may be incurred by him in the bona fide exercise of his functions as mandatary or by reason of the same.

4. The mandatary shall not be entitled to sell Maltacom's shares in Vodafone (Malta) Limited but shall be empowered to give his consent as a Director of Vodafone (Malta) Limited for the purpose of removing any obstacles to the reduction in the said company's tariffs for mobile telecommunications services and for the adoption of market oriented tariff structures and strategies by the company.

5. This arrangement shall continue until the end of July 2001 when the Authority will review the situation and the progress made in the implementation of the process envisaged by the Plan.

6. Vodafone (Malta) Limited shall co-operate towards enabling the sale of the shares of Maltacom p.l.c. in that company and no shareholder or director in the said company shall seek to take advantage of the situation in order to seek to dictate the price at which the shares are sold or in order to seek a forced sale of the shares or to put in motion any procedure with such a purpose or effect.

7. Vodafone (Malta) Limited and its Directors and shareholders shall not interpret the present measure as a "Relevant Event" in terms of Article 31 of the Articles of Association of that company.

This directive is being issued on the 4th June 2001 and shall have immediate effect.

Joseph V. Tabone
Chairman
Malta Communications Authority"