

Proposed Decision on Universal Service Obligations on Electronic Communication Services

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1 Background

1.1 Introduction

The Universal Service is defined as the minimum set of services of specified quality which are to be made available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price.¹ The objective of the universal service is to make available quality services at just, reasonable, and affordable rates to everybody upon reasonable request in an appropriate fashion and at affordable rates. This ensures that persons on low incomes, in rural, insular, or high-cost areas, persons with disabilities and other vulnerable groups have access to telephony related services at reasonable prices.

The essential elements of the universal service that are to be provided by a designated operator are outlined in the Electronic Communications (Regulation) Act, Cap.399 (the "Act") and the Electronic Communications Networks and Services (General) Regulations, LN412 of 2004 (the "Regulations"). These include *inter alia* the provision of connection to the public telephone network at a fixed location, access to publicly available telephone services, directory information services, public pay telephones and facilities for disabled users and those with special social needs.

The Malta Communications Authority ("MCA") is responsible for the regulation of the Maltese electronic communications sector in accordance with national and EU legislation. In accordance with the relevant legislation, the MCA may further define the scope of particular elements of the universal service. Furthermore, the MCA is required to decide which undertaking or undertakings should be designated as being responsible for the provision of one or more of the constituent elements of the universal service. The MCA is bound to notify the European Commission of the names of the undertaking(s) so designated.²

This proposed decision aims at examining the scope of the universal service in particular in relation to the obligation to meet reasonable requests for connection to the public telephone network, in relation to directory services, public pay telephones, services for persons with disability, and affordability. The proposed decision aims furthermore at designating the relevant undertaking or undertakings that shall be responsible for the provision of all or

¹ Electronic Communications (Regulation) Act, Cap. 399, Article 2

² Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 24

part of the universal services. Finally, the proposed decision also examines preliminary issues relating to the cost and funding of the universal service.

1.2 Legal Background

This proposed decision analyses universal service obligations in accordance with the Act and Regulations.

Part IV of the Regulations governs the universal service and users' rights. Regulation 30 provides that the MCA may designate one or more undertakings to comply with the obligations to provide access at a fixed location, directory enquiry services and directories, public pay phones and specific measures for disabled users.

The MCA may also, in the light of national conditions, specify requirements to be complied with by a designated undertaking for the purpose of ensuring that such undertaking provides tariff options or packages to consumers, in particular to ensure that those on low incomes or on special social needs may access and use the publicly available telephone service.³

In designating an undertaking, the MCA is required to adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is *a priori* excluded from being designated. The designation methods adopted must ensure that the above services are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation.⁴

The MCA may designate different undertakings or sets of undertakings to provide different elements of universal service and, or to cover different parts of the national territory.⁵

1.3 Current Universal Service Provider Designation

The current universal service providers were designated by the MCA Decision entitled 'Universal Telecommunications Services - Report on Consultation and Decision' of July 2003 (hereafter the "Universal Telecommunications Services Decision")

³ *Ibid.*, Regulation 31(2)

⁴ *Ibid.*, Regulation 30(3)

⁵ *Ibid.*, Regulation 30(2)

Under this regime, the designations may be summarised as follows:

- **Provision of Access at a Fixed Location:** GO p.l.c. (hereafter "GO") formerly Maltacom p.l.c., was designated as the organisation obliged to provide this service.
- **Emergency Services:** All operators providing telephony services were obliged to provide free access to emergency services to end users connected to their telecommunications network, including payphones.
- **Directory Enquiry Services and Directories:** GO, formerly Maltacom p.l.c., was designated as the organisation responsible to provide this service.
- **Public Pay Telephones:** GO, formerly Maltacom p.l.c., was designated as the organisation obliged to provide this service.
- **Provision of Maritime Communications Services:** The MCA directed that GO, formerly Maltacom p.l.c., would be required to continue to provide these services until the 31 December 2003.
- **Special Measures for Disabled Users and those with Special Needs:** GO, formerly Maltacom p.l.c., was designated as the organisation responsible for providing these special measures until 31 December 2003. GO, formerly Maltacom p.l.c., was to continue to provide Telecare services in 2004 until further notification. Vodafone Malta Limited was designated as the mobile operator responsible for the provision of handsets to be used by people with hearing impairments.

In terms of the transitory provisions of the Act, in particular Article 38(3) of the Act, the 2003 designations are valid until varied or revoked by the Authority and hence such designations have been extended into the current legal framework and are still applicable today.⁶

1.4 Necessity for New Designations

Notwithstanding the extension of the designations made under the former framework into the current framework, the MCA is of the view that there is sufficient reason for a reassessment of the scope of the universal services and of the designation of undertakings as universal service providers.

First, the current regime necessitates an analysis of the scope of the universal service. The MCA is thus required to exercise its discretion in describing in

⁶ Electronic Communications (Regulation) Act, Cap. 399, Article 38(3); see also Articles 38 to 41.

further detail aspects of the universal service in relation to the provision of access at a fixed location, directory enquiry services and directories and the provision of public payphones.⁷ The MCA may specify specific measures applicable to designated undertakings for disabled users.⁸ The MCA may also, in the light of national conditions, specify conditions for reduced tariff options for users and furthermore for ensuring that users can control expenditure through the adoption of certain measures.⁹

Second, a new designation of an undertaking or undertakings responsible for the provision of the universal services is required. Differently from the former framework, under current Regulations the MCA may now designate different undertakings or sets of undertakings to provide different elements of universal service and, or to cover different parts of the national territory.¹⁰

The situation of the Maltese electronic communications market has changed substantially since the date of the MCA's 2003 Universal Telecommunications Services Decision. Following the launch of alternative telephony services offered from a fixed location, customers are now being offered a choice in the fixed-line market with service providers competing against each other and offering different price schemes and services. The existence of more than one fixed-line electronic communications operator allows for the possibility of all or part of the universal service obligations to be provided by operators other than GO plc.

As stated above, the law has been amended to reflect changes in the market and now allows for different undertakings to be designated for the provision of different elements of the universal service. The current Regulations impose upon the MCA, when designating one or more operators to provide the different elements under the universal service, to adopt an efficient, objective and non-discriminatory mechanism whereby no undertaking is *a priori* excluded from being designated.¹¹

Finally, there is a need to revisit the Universal Telecommunications Services Decision of 2003 also for the purposes of deciding upon and clarifying certain issues in relation to the cost and funding of the universal service. The

⁷ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulations 26, 27 and 28

⁸ *Ibid.*, Regulation 29

⁹ *Ibid.*, Regulations 31 and 32

¹⁰ *Ibid.*, Regulation 30(2); see also Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 9

¹¹ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 30(3)

Regulations allow designated undertakings to seek and in particular instances receive, funding for the net costs of meeting the obligations concerned. In order for such an application to be successful, it must be established that the obligation imposed upon the undertaking causes it to bear an 'unfair burden'.¹² In such a case, the net costs incurred may be financed on the basis of different funding mechanisms.¹³

¹² *Ibid.*, LN412 of 2004, Regulation 35

¹³ *Ibid.*, LN412 of 2004, Regulation 36

2 The Scope of the Universal Service Obligations

2.1 Provision of Access at a Fixed Location

A fundamental requirement of the universal service is to provide users with a connection to the public telephone network at a fixed location at an affordable price upon request.¹⁴ However, the undertaking that is designated for the provision of this service need only satisfy “reasonable” requests for connection.¹⁵ GO, as the current universal service provider, is required to do this on a nationwide level.

The Regulations provide that apart from this connection, the designated universal service provider must provide access to publicly available telephone services.¹⁶ Any connection provided by a designated undertaking must be capable of allowing end-users to make and receive local and international calls, facsimile communications and data communications at data rates that are sufficient to permit functional internet access. This must be done taking into account prevailing technologies used by the majority of subscribers, and technological feasibility.¹⁷

2.1.1 Reasonableness

In terms of the Regulations, the MCA may specify requirements to be complied with by a designated undertaking in relation to the reasonableness of requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.¹⁸

The MCA has noted that in certain jurisdictions, national regulatory authorities have benchmarked the reasonableness or otherwise of such a request according to the expenditure involved in meeting a request. If the expenditure

¹⁴ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 8

¹⁵ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 26(1)

¹⁶ *Ibid.*, Regulation 26(1)(b)

¹⁷ *Ibid.*, Regulation 26(2)

¹⁸ *Ibid.*, Regulation 26(4)(b)

involved exceeds a set limit, then the universal service provider is only obliged to meet such request if the applicant agrees to the payment of all costs over the said limit.

The MCA however has noted that the level of expenditure at which the limit is generally set is such that this would apply only in cases where the applicant is in a very remote region. For this reason, and considering the geographical and population characteristics of the Maltese Islands including its small size and population density, the MCA is of the view that any request made by a person in the Maltese Islands, including Gozo and Comino, for the provision of connection and access is reasonable, provided that such applicant agrees to the payment of the standard connection fee.

Proposed Decision 1

All requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location made in the Maltese Islands shall be considered reasonable, provided that the applicant agrees to the payment of the standard connection fee. Such a connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications and data communications at data rates that are sufficient to permit functional internet access.

2.2 Directory Enquiry Services and Directories

The Regulations provide that under this obligation, the designated undertaking/s is/are obliged to ensure the following:

- That a comprehensive directory which includes all subscribers of publicly available telephone service providers, is made available to all end-users in a form approved by the Authority, whether printed or electronic or both as the MCA may determine, and is updated at least once each year; and

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- That a comprehensive telephone directory enquiry service is made available to all end-users, including users of public payphones.¹⁹

2.2.1 Telephone Directory Enquiry Services

At present, although GO is the only organisation designated to have the obligation to provide these services²⁰, various other operators also provide directory enquiry services. The MCA National Numbering Plan Allocations as at the date of printing of this proposed decision lists the following telephone directory enquiry services that are commercially available:

- 1181 Melita Directory Enquiries
- 1182 GO Directory Enquiries
- 1187 Go Mobile Directory Enquiries
- 1188 Malta Directory Services
- 1189 Vodafone Directory Enquiries²¹

These telephone directory enquiry services are available against a charge. This is permitted at law as the universal service regime does not necessitate that the service is available for free but merely that it is available at affordable rates.

Despite the fact there appears to be competition in the provision of directory enquiry services and therefore a commercial incentive to provide such services, the MCA is of the opinion that there is value in retaining the provision of directory enquiry services as part of the universal service obligations because the MCA can thus guarantee that the service is offered at affordable rates. In any case, the Regulations require the universal service to consist in the provision of both elements, in other words both directory enquiry services and directory services.

The MCA, in a Decision entitled 'Directory Information Products and Services – Report on Consultation and Decision' of July 2002, detailed the manner in which the universal service provider is to collect directory information and

¹⁹ *Ibid.*, Regulation 27(1)

²⁰ MCA Decision, 'Universal Telecommunications Services – Report on Consultation and Decision', July 2003, Decision 3, p.9

²¹ MCA National Numbering Plan Allocations, August 2007

delineated the manner in which directory enquiry services are to be provided.²² The MCA is of the view that this Decision should continue to be applicable in relation to the provision of directory enquiry services as part of the current universal service.

Proposed Decision 2

The MCA Decision entitled 'Directory Information Services – Report on Consultation and Decision' of July 2002 shall continue to apply in relation to collection of directory information and in relation to the provision of directory enquiry services, insofar as the said Decision is compatible with the current regulatory framework, and not superceded by the directives emanating from this document.

2.2.2 Directory Services

The Regulations provide that a comprehensive directory of subscribers shall be made available to all end-users in a form approved by the Authority, whether printed or electronic or both as the MCA may determine, and is updated at least once each year.

The MCA notes that in 2006 GO commenced to provide a comprehensive directory - including therefore numbers of subscribers of all publicly available telephony service providers -. This directory is provided in the form of an online electronic directory.

In the aforementioned MCA Decision entitled 'Directory Information Services - Report on Consultation and Decision' published in August 2002, the MCA directed GO to publish a new printed telephone directory containing fixed-line telephone numbers only.²³ This was to be distributed free of charge to every subscriber of fixed-line telephony services. The MCA also directed that GO publish and distribute supplements when needed at intervals not exceeding three years.

According to Regulation 27, the comprehensive directory to be made available by the universal service provider and updated at least once a year may be

²² MCA Decision, 'Directory Information Products and Services – Report on Consultation and Decision', July 2002, Chapters 4 and 5

²³ MCA Decision, 'Directory Information Products and Services – Report on Consultation and Decision', July 2002, Section 5.2, p.14

either printed or electronic, as the Authority may determine.²⁴ The MCA notes that currently the designated undertaking provides an electronic directory which is comprehensive and updated as specified.

Proposed Decision 3

The universal service shall include the provision of a comprehensive electronic telephone directory free of charge. The electronic directory shall be updated real-time whenever technically possible.

2.2.3 Printed telephone directory

The MCA is aware that for those persons that do not have easy or efficient access to the electronic version of the directory, access to a printed directory may be relevant. For this reason, the MCA considers it necessary to evaluate whether the obligation to provide a printed directory should remain part of the universal service and whether it should be provided for free. The Authority is also of the opinion that if this is the case, it is also appropriate to evaluate whether such a directory should be limited to GO subscribers or include other fixed and mobile publicly available telephone subscribers and how often this printed directory should be updated.

The MCA has noted that, as explained in its aforementioned Decision of July 2002, a printed directory which includes mobile phone subscribers would be impractical given subscriber churn.²⁵ Furthermore, because a subscriber generally has both a fixed and mobile number such inclusion would lead to unnecessary duplication of entries.

However, the MCA is of the opinion that this reasoning does not apply in relation to publicly available telephone services provided from a fixed location.

The MCA is of the view that if a printed directory had to be made available, it could be of benefit to a consumer not having access to the electronic directory. However, one should carefully evaluate if the derived benefits from the printed directory would outweigh the costs involved which are subject to be

²⁴ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 27(1)(a)

²⁵ MCA Decision, 'Directory Information Products and Services – Report on Consultation and Decision', July 2002, Section 5.2, p.14

substantial. To This effect the MCA is considering to include within the scope of the universal service, an obligation on all operators providing a publicly available telephone service at a fixed location, to provide the facility of at least one call per week to a 118X directory service of their choice. This call would be free of charge to each of their subscribers as a valid alternative to the printed directory.

In April 2009 the MCA commissioned Informa Consultants to undertake a survey, using a sample methodology which is representative of the Maltese population, to assess the public's opinion and perceived attitude towards the printed telephone directory. The specific objectives of this research were to:

- identify the frequency of use of the printed telephone directory.
- assess the perceived relevance of such a directory in this day and age.
- assess the public's views and attitude toward the environmental impact of printing and distributing the directory.
- evaluate alternative solutions to the printed telephone directory and likelihood of people purchasing it.

The findings of this survey show that the usage of the printed directory is rather limited with almost 60% of the population never using it, or using it less often than once every 6 months. Notwithstanding, a large percentage (47.1%) still think it is relevant, especially those in the 50-64 year old bracket.

The results of the survey also show that use of the online comprehensive directory is considerably low with over 67% never making use of it. This was especially evident among the 65 year old plus bracket with 94% never using it.

Nearly 47% of people surveyed are of the opinion that all subscribers should be entitled to a free copy of the printed telephone directory, whilst 32% believe that a free copy should be made available to people with low income. Notwithstanding, more than 66% of people surveyed would not buy the printed directory if it had to be provided at any charge, while nearly 26% stated that they are willing to pay less than €5 for it.

The results of the survey also clearly indicate the majority feel that the impact on the environment needs to be considered. More than 70% of the respondents showed this concern.

The survey also assessed the frequency of using the telephone directory enquiry service by dialling 118x. The findings indicate that around 54% never use this service or use it less than once every 6 months, and approximately 21% of the population use the 118x service once a month. When asked if a limited number of free calls to 118x would be a valid alternative to the printed

telephone directory, 82% of the people surveyed agreed. 54.5% considered one call a week to be a reasonable amount, another 15.4% said that one call a month is reasonable, whilst 15.4% added that all enquiry calls should be free.

When comparing the overall use of the printed, online and enquiry services, the findings indicate that the online directory is the method used least whilst the telephone enquiry service is used the most although not much more than the use of the printed directory.

Based on the findings of the survey, one can conclude that if the printed directory had to be ceased, it would predominantly impact people aged 50 years and over. However, alternative options such as calls to a 118 number would be an adequate solution to a large part of the population including the 50 to 64 year old bracket, and the 65 and over bracket, with approximately 76% of them confirming this.

The MCA is seeking the opinion of the various stakeholders on their views on how or whether the printed directory should be treated in the scope of the Universal Service. To this effect the MCA is proposing the three different options (A, B & C) found in proposed Decision 4 below.

Proposed Decision 4

Option A: The universal service shall include the provision of a printed directory including the numbers of all subscribers of publicly available telephone services at a fixed location but it does not need to include the numbers of mobile subscribers. The said printed directory shall be provided free of charge to all subscribers of publicly available telephone services at a fixed location. This printed directory shall be updated at least once every five years.

Option B: The universal service shall include the provision of a printed directory including the numbers of all subscribers of publicly available telephone services at a fixed location but it does not need to include the numbers of mobile subscribers. The said printed directory shall be provided at a reasonable cost to the general public and shall be updated at least once every five years.

Option C: The universal service shall not include the provision of a printed directory. However it shall include the provision of at least one call per week free of charge to a 118X directory service by every undertaking providing publicly available telephone services at a fixed location to each of its subscribers.

2.3 Public Payphones

In terms of the Act, a public payphone means a telephone available to the general public, the use of which may be paid by various means including coins, credit or debit cards and pre-payment cards, including cards for use with dialling code.²⁶

The Regulations lay down that the designated undertaking is to ensure that sufficient public payphones are provided to meet the reasonable needs of end-users in terms of geographical coverage, the number of telephones, the accessibility of such telephones to wheelchair bound users and the quality of services.

Furthermore, the Regulations as well as the Directive lay down that an undertaking providing public payphones must ensure the possibility of making an emergency call from a public payphone using the single European emergency call number "112" and any national emergency call number that may be specified by the MCA in any case free of charge and without the necessity to use coins or cards or any other means of payment.²⁷ Currently GO has a number of payphones distributed in Malta and Gozo.

As a consequence of the increase in mobile telephony usage, there has been a resulting decrease in the public payphone usage. However, notwithstanding such a decrease in usage, the MCA is of the view that the service remains highly essential for users that do not have access to a landline or a mobile phone, or whose phone powering has run out. Thus, public payphones are indispensable not only for reasons of social and economic inclusion but also – and perhaps more importantly – in case of emergency where one has no other means of communication at hand.

In this light, the MCA is of the view that despite there being an overall decrease in the number of minutes originating from payphones, the universal service should nevertheless ensure the provision of public payphones to meeting the needs of end-users.

²⁶ Electronic Communications (Regulation) Act, Cap. 399, Article 2

²⁷ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 28(4), Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 12

Proposed Decision 5

The universal service shall include the provision of public payphones, which payphones shall continue to be provided at the same frequency and geographical coverage as is currently the case.

The MCA also notes that currently GO provides payphones that operate mainly with top up cards (known as “telecards”) or with coins (which service is generally offered though a subcontractor acting on behalf of GO). As stated above, the relevant legislation defines public payphone as a telephone available to the general public, the use of which may be made by means of payment including coins, credit or debit cards and pre-payment cards. For this reason the MCA encourages the designated undertaking to provide payphones that allow all these payment methods.

2.4 Specific Measures for Disabled Users

The MCA is empowered at law to specify obligations applicable to designated undertakings for the purpose of ensuring that disabled end-users can enjoy access to and affordability of publicly-available telephone services, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.²⁸

In its Universal Telecommunications Services Decision of 2003, the MCA had designated GO, formerly Maltacom p.l.c., as the universal service provider for measures for disabled users at fixed locations. GO, formerly Maltacom p.l.c., was given the responsibility of providing special terminals, including text telephones, amplified telephone sets and large-button telephone sets for disabled users. GO, formerly Maltacom p.l.c., was also directed to continue providing Telecare services in 2004 until further notification. At the time, the universal service determined in accordance with former legislation included the provision of mobile handsets with special functions for disabled users by Vodafone Malta Ltd.

²⁸ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 29(1)

The MCA is of the view that in accordance with Regulation 29(2) there is a need for further definition as to the terms and conditions to be complied with by the designated undertaking for the purpose of ensuring that disabled users may take advantage of the choice of undertakings and service providers available to the majority of end users.

In this light, the MCA notes that the recitals to the Universal Service Directive provide further detail as to the possible services that may be required to be provided for persons with special needs. In particular, the said Directive provides that suitable measures would include making available public telephones, public text telephones or equivalent measures for deaf or speech-impaired people, providing directory enquiry services or equivalent free of charge for blind or partially sighted people, providing itemised bills in alternative format and providing easy access to emergency services.²⁹

To this effect the MCA is of the view that the designated undertaking is to make the following handsets available to the persons with disability at a fixed location at affordable rates:

- Handsets which allow a hearing aid to be connected to the set;
- Amplified telephone sets having the possibility of increasing the level of either incoming or outgoing speech;
- Portable amplifiers that is attached to telephone handset thus amplifying income speech;
- Tone callers that increase the telephone's ringing tone;
- Silent Call Indicators which flashes a very bright light when the telephone rings;
- Large button telephone sets having a large keypad designed for visually impaired persons;
- Text telephones via which a conversation may be typed displayed on ascreen.

²⁹ Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 13

Proposed Decision 6

The universal service shall include the provision of the following handsets at affordable rates: handsets which allow a hearing aid to be connected to the set, amplified telephone sets, portable amplifiers, tone callers, silent call indicators, large button telephone sets and text telephones.

Proposed Decision 7

The universal service shall include the provision of itemised billing in an electronic format that is compatible with speech narration software or any other suitable format free of charge upon demand by a visually impaired person after receiving proof of his/her condition.

Similarly as regards directory enquiry services, the MCA is of the view that special directory enquiry arrangements to use the directory enquiry services free of charge should be available to visually impaired persons.

Proposed Decision 8

The universal service shall include the provision of directory enquiry services free of charge for visually impaired persons after receiving proof of his/her condition.

Finally, the designated undertaking should continue to provide a service similar to the "Telecare" service provided today. This service would include the provision of an alarm unit that may be activated by a large button on the set and a portable small button. The alarm unit would automatically dial the Control Centre once it is activated.

Proposed Decision 9

The universal service shall include the provision of a 'Telecare' type of service allowing easy access to emergency services.

The MCA is of the opinion that in relation to mobile phones, the universal services formerly required are no longer necessary since the envisaged services are today incorporated into all regular mobile handsets and thus this element of the universal service has become obsolete.

Proposed Decision 10

The universal service shall no longer include the provision of mobile phones with additional services or functions for persons with disabilities for the sole reason that all mobile phones incorporate these services or functions.

2.5 Provision of Reduced Tariff Options for Users

The Regulations provide that the MCA is to monitor the evolution and level of retail tariffs of services identified under the Universal Service Obligation and provided by designated undertakings, in particular in relation to national consumer prices and income. Furthermore, the MCA may direct a designated undertaking to provide reduced tariff options or packages to consumers, especially those on low incomes or on special social needs.³⁰

The MCA notes the importance, for social as well as economic reasons, that all persons are able to make use of telephony services even if at a basic level. In particular, the target groups of such reduced tariffs could be vulnerable user groups, such as users on low incomes or with special social needs.

At present, affordability is maintained via a number of regulatory mechanisms. The MCA regulates the retail tariffs of access and connection to telephone

³⁰ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 31

services as per price control remedies, generally including cost-orientation obligations, imposed following relevant market analyses.³¹

Furthermore, GO currently offers a number of free calls and no rental charges to low income users. The MCA notes that such a scheme is in conformity with the Universal Service Directive which provides that ensuring affordability may involve the provision of some service to some end-users at prices that depart from normal market conditions.³²

The MCA believes that, collectively, these schemes contribute to rendering the universal service affordable to consumers, especially vulnerable users on low incomes or on special social needs. The MCA is thus of the view that the universal service should continue to include such schemes.

Proposed Decision 11

The designated undertaking shall provide reduced tariff options which would contribute to render the universal service affordable to consumers, especially vulnerable users on low incomes or with special social needs.

2.6 Ensuring Users can Control Expenditure

Another consideration ensuring affordability of the universal service is related to the ability of the customer to monitor and control their expenditure.³³ Thus in addition to providing tariffs which are affordable, the designated universal

³¹ See MCA Decisions 'International telephone services provided at a fixed location - Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies' of 9th October 2006, 'National telephone services provided at a fixed location - Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies' of 20th September 2006 and 'Access to the public telephone network at a fixed location - Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies' of 20th September 2006

³² Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 4

³³ *Ibid.*, Recital 10

service provider/s should also provide tools that enable subscribers to monitor and control expenditure. The Regulations lay out a list of facilities and services which a designated undertaking must provide in order to empower the customer to monitor and control expenditure.³⁴

2.6.1 Itemised billing

As per MCA Decision of the 11th January 2002 entitled 'Itemised Billing by Telecommunications Operators'³⁵, all operators providing public telephone networks or services are required to provide at as a minimum the defined level of itemised billing at no additional cost. This decision applied only to post-paid services because operators providing prepaid services enable their subscribers to verify and control call charges by means of other mechanisms.

The MCA notes that in terms of the Regulations, the MCA may require the designated undertaking or undertakings to provide a basic level of itemised bills free of charge.³⁶ Therefore, under current legislation, the MCA is empowered to require the provision of itemised billing only from a designated undertaking.

In terms of the Regulations, the itemised billing should be sufficient to allow verification and control of the charges incurred in using the public telephone network at a fixed location and/or related publicly available telephone services, and to adequately monitor usage and expenditure thereby allowing the customer to exercise a reasonable degree of control over bills³⁷

The MCA is of the view that the provision of itemised billing by the designated undertaking remains an essential tool in ensuring users may control their expenditure.

³⁴ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004 Fifth Schedule; see also Regulation 32(2) and Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 15.

³⁵ -MCA Decision, "Itemised Billing by Telecommunications operators" DN01/02, 11th January 2002

³⁶ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Fifth Schedule, Part A, 1.1

³⁷ *Ibidem*

Proposed Decision 12

The designated undertaking/s shall provide itemised billing free of charge to subscribers. Such itemised billing shall be provided at the level described in the MCA Decision of the 11 January 2002 on 'Itemised Billing by Telecommunications Operators' and this said Decision, whilst being limited to the designated undertaking/s, shall continue to apply insofar as it is compatible with the current regulatory framework, and not superceded by the directives emanating from this document.

2.6.2 Selective call barring for outgoing calls, free of charge

This facility allows a subscriber to request the telephone service provider to bar outgoing calls of defined types of numbers free of charge.³⁸ According to Regulation 32, a designated undertaking shall, for the purpose of ensuring that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service, provide, in addition to other specified services, selective call barring for outgoing calls, free of charge. The MCA is of the view that the designated undertaking shall continue to provide the possibility to consumers to selectively block calls including high price calls and calls to premium services. This decision shall be without prejudice to any future decision or directive that may be published by the MCA which could extend such obligations to other operators in accordance with the law.

The MCA notes that currently GO levies a fee of €23.29 (Lm10) (VAT excluded) for barring and a fee of €3.49 (Lm1.50)(VAT excluded) for any modification of barring facility. The MCA is of the preliminary view that this charge is not compatible with the legal provision that selective call barring for outgoing calls should be free of charge and is *hereby* proposing to decide that call barring hereto forth shall be free of charge.

³⁸ *Ibid.*, Fifth Schedule, Part A, 2.1

Proposed Decision 13

The designated undertaking/s shall provide call barring free of charge to block all outgoing calls and selectively by category including: calls to international numbers, calls to premium services, and other call categories incurring charges higher than for regular on-net calls. This decision shall be without prejudice to any future decision or directive that may be published by the MCA which could extend such obligations to other operators in accordance with the law.

2.6.3 Prepaid services

The MCA notes that GO offers a service called 'EasyLine' which allows a subscriber to prepay for each call rather than pay rent or receive a bill. This scheme is aimed at allowing consumers to spread the cost of their phone bill rather than have to pay the line rental upfront. The MCA notes that such a scheme is also promoted by the Universal Service Directive that recommends that the possibility for consumers to control expenditure exists via a pre-payment means and the possibility for consumers to offset upfront connection fees. The MCA is of the view that the designated undertaking should continue to provide such prepaid services.

Proposed Decision 14

The designated undertaking shall provide a prepaid service which allows a subscriber to prepay for calls rather than pay rent or receive a bill.

2.6.4 Spending Thresholds

The MCA has over the years received a substantial number of complaints relating to excessive telephone bills where subscribers denied or claimed that they were not aware that the calls invoiced in the bill were actually made. At times, such excessive bills are the result of 'rogue diallers' that hijack the computer modem of the subscriber and use it to dial-up a premium rate

foreign telephone number, thus resulting in huge telephone charges. Excessive bills may also be the result of unauthorised use of the phone by third parties including dialling premium numbers without the consent of the person paying the bill.

The MCA is of the view that the introduction of spending thresholds whereby a subscriber is alerted where a predetermined limit of expenditure selected by the client is exceeded or where an abnormal calling pattern occurs would be extremely beneficial in this respect as it would safeguard consumers against the problems highlighted above.

Proposed Decision 15

The designated undertaking shall provide a service whereby a subscriber is alerted where a predetermined limit of expenditure selected by the client is exceeded or where an abnormal calling pattern occurs which service shall be provided free of charge.

3 Designation of the Universal Service Provider

3.1 Designation Period

In its Universal Telecommunications Services Decision of July 2003, the MCA had undertaken to review the designations contained in the Decision within a period of not earlier than two years from the publication of said Decision. The MCA also reserved the right to review the designations it had made, as it deems appropriate in the exercise of its regulatory function.³⁹

At the time, the two year period indicated for the revision of the designations coincided with the timeframe envisaged for the revision of the legislative framework. Therefore, it was foreseen that amendments to the framework could necessitate a review or re-evaluation of the said universal service designations.

On the basis of the same reasoning, the MCA believes that the period until which the designations specified in this current Proposed Decision are to continue to apply, should also be in line with the proposed changes to the EU Framework and national law. Since the EU Commission has initiated a review process of the regulatory framework, the expected timescale for national transposition of any future amendments should be taken into consideration for the purposes of determining the duration of the current designations.

The end of 2010 is the projected deadline whereby the EU plans to have published its revisions to the Directives. Considering this timeframe, the MCA proposes that the deadline for the review of this Decision should be set at a date following the review and updating of the local legislative framework. The current Universal Service Directive lays down that the scope of the Universal Service and the designation of undertakings should be reviewed periodically.⁴⁰ To this end the MCA reserves the right to review the designations as appropriate even prior to the set date in accordance with its regulatory powers and responsibilities.

³⁹ MCA Decision, 'Universal Telecommunications Services – Report on Consultation and Decision', July 2003, pt.4.2, p.12

⁴⁰ Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 25

Proposed Decision 16

The MCA will undertake a review of this Decision following the review and updating of the local legislative framework in line with the European Union's future revision of its directives. The MCA reserves the right to review these designations prior to such date as appropriate according to its powers at law.

3.2 Criteria for Designation

The Regulations lay down that in designating one or more undertakings to provide all or some of the elements of the universal service, the MCA must adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking/s is *a priori* excluded from being designated.⁴¹

As a consequence of the increase in competition in telephony markets since the last designation, there is now the possibility that all or part of the universal service obligations may be provided by operators other than GO.

In view of the aforementioned required characteristics of the designation mechanism, the MCA is hereby highlighting the criteria whereby it will assess which undertakings should be responsible for the provision of all or part of the universal service.

3.2.1 Technical Competence and Expertise in Providing the Service

The Universal Service Directive provides that National Regulatory Authorities are to assess the 'ability' of undertakings to provide the particular elements of the universal service.⁴² Thus the MCA must examine the potential of an undertaking to carry out the universal service obligation in question to the full.

At this stage, the MCA is of the view that it is necessary to clarify that it is not self-evident that an undertaking with significant market power will necessarily

⁴¹ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 30(3)

⁴² Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 14

be designated as universal service provider. Nonetheless, the MCA will consider whether significant market power is in itself evidence of technical competence as well as the ability to provide the service in the most efficient and effective manner.⁴³

3.2.2 Willingness

The Universal Service Directive also provides that the willingness of an undertaking to provide a particular element of the universal service is to be taken into account when designating the universal service provider.⁴⁴

3.2.3 Network Integrity and Service Continuity and Quality

Another important criterion indicated by the Directive is the ability of the undertaking to maintain the integrity of the network as well as service continuity and quality.⁴⁵

3.2.4 Cost Effectiveness and Cost Efficiency

Finally, according to the Universal Service Directive, universal service obligations should be allocated to operators demonstrating the most cost-effective means of delivering access and services.⁴⁶

The element of cost-effectiveness is central to the universal service. This is clear from the fact that in the Regulations as well as the Directive, it emerges as an element which not only needs to be considered, but actually ensured, in the designation process.⁴⁷

The cost efficiency element is also essential in order that users pay prices that generally correspond to efficient cost provision.⁴⁸ In terms of the Regulations, the MCA is obliged to seek the provision of universal services at prices or

⁴³ Refer to Section 3.2.4

⁴⁴ Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 14

⁴⁵ *Ibid.*, Recital 14

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, Article 8(2); Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 30(3)

⁴⁸ Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Recital 14

subject to other terms and conditions that do not depart from normal commercial conditions, while safeguarding the public interest.⁴⁹

Cost effectiveness and cost efficiency are therefore indicated by:

- the pricing of the service, including any ancillary fees or charges,
- to what extent the proposed pricing will cover the costs of the service,
- the extent to which the provision of the universal service can take place without claims for funding.

The above aspects will be determining factors in designating one or more undertakings to provide all or some of the elements of the universal service

Proposed Decision 17

The criteria for assessing which undertaking shall be responsible for the provision of all or part of the universal service shall be the following:

- **Technical Competence and Expertise in Providing the Service,**
- **Willingness to Provide the Service,**
- **Network Integrity and Service Continuity and Quality,**
- **Cost Effectiveness and Cost Efficiency of the Service.**

3.3 Call for Expressions of Interest

As stated above, the aforementioned criteria shall be taken into account in the designation of an operator as provider of each element of the universal service.

Once the decision on Universal Service Obligations on Electronic Communication Services is published following this proposed decision, the MCA shall invite all interested undertakings to express their interest in providing all or part of the universal service. All expressions of interest should be accompanied by:

⁴⁹ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 25(3)

- **Proof of ability and technical competence in providing the service;**
- **A detailed description of how the obligation concerned will be fulfilled;**
- **Proof of network integrity, service continuity and quality, if applicable**
- **Details on the proposed pricing of the service including any ancillary fees or charges and to what extent the proposed pricing will cover the costs of the service and if claims for funding are envisaged.**

3.4 Proposed Designations in Default of Expressions of Interest

As stated above, the MCA shall in its Decision invite all parties willing to provide all, or part of, the universal service, the opportunity to present the Authority with an Expression of Interest within a given timeframe.

In default of such an Expressions of Interest, the MCA is proposing to designate an undertaking to be responsible for providing each of the universal services as stated in the following proposed decisions below.

3.4.1 .Designation for the Provision of Access at a Fixed Location

The undertaking designated to provide this service should be capable of providing access and connection across the Maltese islands. GO has ubiquitous coverage and remains the major fixed-line provider.

In addition GO has considerable experience in the provision of access and connection at a fixed location. Over the years, GO has been subject to Quality of Service reporting on parameters based on the European Telecommunications Standards Institute's Quality of Service Parameters⁵⁰ and has been subject to obligations of network integrity and service continuity. GO

⁵⁰ Telecommunications Standards Institute guide (ETSI) EG 201769 Quality of Service Parameters; see Directive 2002/22/Ec of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights relating to Electronic Communications Networks and Services, Annex III

is in fact required to publish quality of service information in accordance with the relevant MCA Decision.⁵¹

Proposed Decision 18

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the universal service with respect to the provision of access at a fixed location.

3.4.2 Designation for the Provision of Directory Enquiry Services

The MCA notes that the national comprehensive electronic directory enquiry service has always been maintained by GO, and that GO customers make up the majority of subscribers. In addition, GO is the only operator currently offering end-users with a printed directory, a free of charge comprehensive electronic directory enquiry service, and a comprehensive 118x telephone directory enquiry service at affordable rates.

Proposed Decision 19

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the universal service with respect to provision of a comprehensive 118x directory enquiry service at affordable rates and the provision of a comprehensive electronic directory service free of charge.

⁵¹ MCA Decision, 'Measuring Authorised Operator Quality of Service Performance - Report on Consultation and Decision', 10th June 2005

3.4.3 Designation for the Provision of the Printed Directory

In Section 2.2.3 the MCA is seeking the opinion of stakeholders on their views on how or whether the printed directory should be treated in the scope of the Universal Service. Depending on the Decision taken with respect to the scope of the Universal Service as per Decision 4, the MCA shall decide on one of the following options:

<i>Proposed Decision 20</i>
Option A: In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the printed directory free of charge.
Option B: In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the printed directory at a reasonable cost.
Option C: The MCA proposes to designate every undertaking providing publicly available telephone services at a fixed location to provide each of its subscribers at least one call per week free of charge to a 118X directory service.

3.4.4 Designation for the Provision of Public Payphones

The MCA considers that the ubiquity of the network of GO as well as the existent of arrangements currently in place for the use of public space for payphones means that GO is capable of providing public payphones throughout the Maltese islands. In fact, GO has been providing payphones around the national territory for a significant number of years.

Proposed Decision 21

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the universal service with respect to public payphones.

3.4.5 Designation for the Provision of Specific Measures for Disabled Users

GO has been the provider of the majority of services for disabled users for a number of years. This evidences that GO has the correct infrastructure, capacity and, substantial experience to provide this service as is required.

Proposed Decision 22

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing the universal service with respect to specific measures for disabled users.

3.4.6 Designation for the Provision of Reduced tariffs

The MCA is of the opinion that GO has the ability as well as the experience to continue to provide reduced tariff options. Since it is being proposed that GO be designated as the universal service provider responsible for providing the universal service with respect to the provision of access and connection at a fixed location, the MCA believes that it is reasonable to designate GO as responsible also for providing an affordable universal service by offering the social benefit facilities described herein. This is without prejudice to the power of the MCA to propose that an alternative operator provide such services following the call for expressions of interest.

Proposed Decision 23

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to designate GO as the undertaking responsible for providing reduced tariff options.

3.4.7 Designation for the Provision of Facilities to Control Expenditure including Prepaid Services

This element of the universal service relates to the provision of itemised billing, selective call barring, prepaid services and the introduction of spending thresholds. Because the provision of such services is dependent on the provision of access services in the first place, the MCA is of the view that the proposed undertaking that is to be responsible for the provision of access at a fixed location should similarly be responsible for the provision of these services. For this reason, the MCA hereby proposes that GO should be responsible for the provision of facilities to control expenditure.

Proposed Decision 24

In default of expressions of interest by other undertakings within the given timeframe, the MCA proposes to oblige GO as the undertaking responsible for providing facilities to control expenditure, including itemised billing, selective call barring, prepaid services and spending thresholds as described in this document.

4 Financing of Universal Service Obligations

4.1 General

At law, where an undertaking has been designated to provide all or part of the universal service and it has as a result suffered an unfair burden, that undertaking may submit a written request for funding to the MCA.⁵² This request must be accompanied by the information necessary for the MCA to determine the issue including a consideration of net costs taking into account any market benefit accrued to the undertaking as a result of the universal service provided.⁵³

To-date the MCA has not received any formal requests for financing from an undertaking designated as having to provide all or part of the universal service. However, in the context of this consultation, the MCA is of the view that the clarification of certain preliminary issues in relation to a request for funding may be beneficial to the industry and will enhance legal certainty.

4.2 Time Period for which Funding may be Requested

Current legislation does not provide a timeframe within which a request for funding must be made. This creates commercial and legal uncertainty in the industry and thus, the MCA, in its role as regulator of the electronic communications market, proposes to clarify the situation by specifying the time period for which a request for funding must be made.

The MCA is of the view that, in the event that it finds that an undertaking is subject to an unfair burden, it would be unreasonable on tax payers or operators that may have to contribute to a funding mechanism⁵⁴ to apply retrospective funding since they would have operated on the assumption that there was no such funding in place.

⁵² Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, Regulation 34(1)

⁵³ *Ibid.*, Regulation 34(2)

⁵⁴ According to Regulation 35(1) of the Electronic Communications Networks and Services (General) Regulations, LN412 of 2004, the MCA may decide to introduce a compensation mechanism from public funds or one shared between providers of electronic communications networks and services

At the same time, the MCA is also cognisant of the consideration that it would be only after a specified period of providing the services in question that the universal service provider would be able to assess whether it has suffered an unfair burden in the provision of the universal service.

For these reasons, the MCA is of the preliminary view that a request for funding may be made during a period of six months following the end of the financial year of the undertaking designated to provide all or part of the universal service. The request for funding shall cover only the period of that financial year and shall not extend to any prior periods.

Proposed Decision 25

The relevant period for assessing a request for funding shall be the most recent completed financial year of the undertaking. The request for funding shall be received by the MCA not later than six months following the end of the said financial year.

4.3 Information to be provided in the Request for Funding

Without prejudice to the power of the MCA to require information⁵⁵, the undertaking requesting funding shall provide the MCA with sufficient evidence supporting the claim that it has suffered an unfair burden (which evidence shall include a consideration of net costs taking into account any market benefit accrued to the undertaking as a result of the universal service provided) in the provision of the universal service. The burden of proof for each Universal Service shall rest with the undertaking requesting the funding.

⁵⁵ Malta Communications Authority Act, Cap.418, Article 10

Proposed Decision 26

The undertaking requesting funding shall provide the MCA with sufficient evidence supporting the claim that it has suffered an unfair burden in the provision of the universal service. This evidence shall include a consideration of net costs taking into account any market benefit accrued to the undertaking as a result of the universal service provided. The burden of proof for each Universal Service shall rest with the said undertaking.

5 Consultation Framework

The MCA invites comments from interested parties regarding this Proposed Decision. The consultation period will run until 12.00pm 30th June 2009.

Comments should be sent to:

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Written representations will be made public by the MCA subject to MCA's Internal Guidelines on Confidentiality published on 16th December 2004.

Philip Micallef
Chairman

5th May 2009