

Universal Service Obligations on Electronic Communication Services

Report on Consultation and Decision

April 2010 (*updated September 2011*)

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Executive Summary

The universal service obligations on electronic communication services are a set of defined services which should be made available to everyone upon reasonable request in an appropriate fashion and at affordable rates as required by law. In line with the current EU framework different undertakings may provide different elements of the universal service.

Following a comprehensive analysis of the current universal service regime, and the outcome of a consultation process which took place in the form of a proposed decision published in May 2009, the main scope of this decision is to re-establish the individual universal service obligations and their respective designations. These services, which are treated in more detail throughout the document, include the provision of access at a fixed location; directory and directory enquiry services including the printed directory; public payphones; measures for disabled users; provision of reduced tariffs; and ensuring that users have the means to control expenditure. In January 2011 the MCA published a further consultation considering whether the timeframe to request for funding should be extended.

The document also covers the financing and designation processes and criteria for the universal service obligations. An updateable Annex with current universal service designations is also being included in this decision.

1 Background

1.1 Introduction

Universal Services are generally defined as a minimum set of electronic communication services essential for the general public to participate in society, and those which are already available to the great majority of citizens. These services should be made available at just, reasonable and affordable rates ensuring that persons on low income, those residing in rural, insular, or high installation cost areas, persons with disabilities, and other vulnerable groups, have access to these services at reasonable prices.

The universal service regime which was in place prior to this decision was based on the decision published by the Malta Communications Authority (MCA) in July 2003. In this decision GO plc (GO), formerly Maltacom plc (Maltacom), was designated as the organisation obliged to provide the following Universal Services: *Provision of Access at a Fixed Location; Directory Enquiry Services and Directories; Public Pay Telephones; Provision of Maritime Communications Services; and also Special Measures for Disabled Users and those with Special Needs* in conjunction with Vodafone Malta Ltd; and *Emergency Services* in conjunction with all other operators providing telephony services.

In terms of the transitory provisions of article 38(3) of the Electronic Communications (Regulation) Act, these designations were valid until varied or revoked by the Authority, to this effect they have been extended into the current legal framework and were still applicable until this decision has been published.

As the entity responsible for the regulation of the Maltese electronic communications sector in accordance with national and EU legislation, the MCA was required to decide, following a detailed analysis and assessment, whether a service should be considered to be included as a universal service, and which undertaking or undertakings should be designated as being responsible to provide it.

In May 2009, the MCA published its proposed decision on Universal Service Obligations on Electronic Communication Services. This document was published on the basis that under the current regulations, unlike as in the previous framework, the MCA may now designate different undertakings, or sets of undertakings, to provide different elements of the universal service and, or to cover different parts of the national territory as depicted in Recital 9 of the Universal Service Directive (2002/22/EC) of the European Parliament.

The proposed decision examined each individual universal service, including the obligation to meet reasonable requests for connection to the public telephone network, directory services, public pay phones, services for persons with disability, and affordability.

A section of this document was dedicated entirely to the designation of the Universal Service Provider, including designation criteria and designation timeframes. It also included information on the required prerequisites and processes for undertakings to express their interest in providing all or part of the universal service. In default of expression of interest it was proposed that GO plc would be designated with the obligation to provide the universal service for each individual service. The Financing of Universal Service obligations were also covered and included applicable timeframes, qualification criteria and type of information which would be required to request for funding.

As in the case of other consultation papers and proposed decisions which are published by the MCA, the objective of this proposed decision was to provide potentially designated entities, operators and other stake holders which include the general public, the opportunity to comment and air their views on the proposed Universal Services and their respective designations. This proposed decision has enticed a number of articles on local newspapers and the media, especially with regard to the printed directory which is being treated in further detail later on in this document.

In January 2011 the MCA published a further consultation considering whether the timeframe to request for funding should be extended.

1.2 Legal Background

The essential elements of the universal service to be provided by designated operators 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.

As also stated in the proposed decision, in Part IV of the Regulations entitled "Universal service and users' rights", Regulation 30 provides that the Authority 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. It also provides that 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.

In designating an undertaking, the Authority 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.¹

Regulation 31 (2) states that Authority 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 which depart from those provided normal commercial conditions, in particular to ensure that those on low incomes or on special social needs may access and use the publicly available telephone service.

1.3 The Universal Service Designations prior to this Decision

The MCA Decision entitled 'Universal Telecommunications Services - Report on Consultation and Decision' of July 2003, which was still applicable prior to publishing of this decision, had designated the following undertakings to provide the universal services:

- *Provision of Access at a Fixed Location*: GO, formerly Maltacom;
- *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;
- *Public Pay Telephones*: GO, formerly Maltacom;
- *Provision of Maritime Communications Services*: The MCA directed that GO, formerly Maltacom (they were 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 was designated as the organisation responsible for providing these special measures until 31 December 2003. GO, formerly

¹ Electronic Communications Networks and Services (General) Regulations, LN412 of 2004 ("LN412 of 2004"), Regulation 30(3)

Maltacom 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, the 2003 designations were valid until varied or revoked by the Authority and hence they had been extended into the current legal framework and were still applicable until the publishing of this decision.²

1.4 Necessity for New Designations

Although the designations made under the former framework were extended into the current framework, there was sufficient reason for a reassessment of the scope of the universal services and the re-designation of undertakings as universal service providers, in relation to the provision of access at a fixed location, directory enquiry services and directories including the provision of public payphones. In light of national conditions, specific measures and conditions have been specified to include designated undertakings ensuring that disabled users can access and afford publicly available telephone services,³ offering reduced tariff options for users, and to also include those designated undertakings ensuring that users can control expenditure through the adoption of certain measures⁴.

Unlike in the former framework, under the 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.⁵

Since the publishing of MCA's Universal Telecommunications Services Decision in July 2003, the Maltese electronic communication market experienced the entrance of alternative telephony service providers presenting the possibility to designate all or parts of different universal service obligations to different service providers other than to GO.

As stated earlier in section 1.2 in this document, the law now allows for different undertakings to be designated for the provision of different elements

² Electronic Communications (Regulation) Act, Cap. 399 (the "Act"), Article 38(3).

³ LN412 of 2004, Regulations 26, 27, 28 & 29

⁴ LN412 of 2004, Regulations 31 & 32

⁵ LN412 of 2004, Regulation 30(2); Universal Service Directive 2002/22/EC ("USD 2002/22/EC") Recital 9

of the universal service. The current Regulations impose upon the MCA to adopt an efficient, objective and non-discriminatory mechanism whereby no undertaking is *a priori* excluded from being designated.⁶

Designated undertakings are allowed to seek, and in particular instances qualify to receive, funding for the net costs of meeting the obligations concerned. In order for such an application for funds to be successful, it must be established that the obligation imposed upon the undertaking causes it to bear an 'unfair burden'. In such a case, the net costs incurred may be financed on the basis of different funding mechanisms.⁷ This shall be treated in more detail in section 4 of this decision entitled "Financing of Universal Service Obligations".

⁶ LN412 of 2004, Regulation 30

⁷ LN412 of 2004, Regulation 35 & 36

2 Responses to the Proposed Decision

The consultation period on the proposed decision on Universal Service Obligations on Electronic Communications Services ran from 5th May 2009 to 30th June 2009.

Feedback on the consultation was received from the following entities and individuals:

- Two private individuals
- Media Today
- Melita plc
- GO plc

The MCA would like to thank all these parties for their feedback.

The feedback pertaining to individual universal service obligations are being depicted in their respective sub-sections found in the following 'Universal Service Obligations' section in this same document to facilitate analysis.

As a general comment one of the respondents expressed its opinion that whilst in principle it recognises the importance of Universal Service Obligations (USOs), on the other hand it has reservations on the USO provider designation mechanism in the Universal Service Directive, and the methodology used on the process for the request for funding. It also stated that whilst in some cases MCA's effort to achieve a balance between reasonability, proportionality and sustainability was noted, in other cases there was too much literal reading of the requirement in the Universal Service Directive.

3 The Universal Service Obligations

3.1 Provision of Access at a Fixed Location

The Universal Service Directive states that 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.⁸ According to the Directive and the Electronic Communications Networks and Services (General) Regulations, the undertaking that is designated for the provision of this service need only satisfy “reasonable” requests for connection⁹ which is being defined in sub-section 3.1.1 below.

The Regulations also establish that besides the provision of such a connection, the designated service provider must provide access to publicly available telephone services.¹⁰ Any 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 as treated in sub-section 3.1.2 below. This must be done taking into account prevailing technologies used by the majority of subscribers, and technological feasibility.¹¹

3.1.1 Reasonableness

In its proposed decision the MCA stated that any request made by a person in the Maltese Islands, including Gozo and Comino, for the provision of connection and access should be considered as reasonable, provided that such applicant agrees to the payment of the standard connection fee.

One of the respondents brought to MCA’s attention a number of valid arguments with respect to the proposed decision, including the fact that a number of such requests emanate from secondary residences, and also that in a number of scenarios the cost of provision is not solely dependent on distance.

To this effect the MCA requested from GO plc, as the current designated USO operator providing this service, statistical information on the frequency such higher than standard connection fees were actually charged to their subscribers

⁸ USD 2002/22/EC, Recital 8

⁹ LN412 of 2004, Regulation 26(1)

¹⁰ LN412 of 2004, Regulation 26(1)(b)

¹¹ LN412 of 2004, Regulation 26(2)

during the past years. It transpired that such an occurrence is very rare, and notwithstanding that there were cases when connections took place in highly remote areas, GO plc still charged the standard connection fee. To this effect the MCA decided not to include the application of the standard connection fee in all circumstances since there could be some rare occasions when such a connection charge could be justifiable. As in the case of any other Universal Service, the MCA reserves the right to monitor and review this decision in accordance with its powers at law to ensure affordability.

3.1.2 Functional Internet Access

As an integral part of the “provision of access at a fixed location” requirement, the Electronic Communications Networks and Services (General) Regulations states that any connection provided by a designated undertaking shall be capable of allowing end-users to make and receive data communications, at data rates that are sufficient to permit functional Internet Access. The development and the dependency on the internet since the last published USO decision have been of titanic proportions, and the current needs of the majority of subscribers cannot be met by conventional dial-up modems due to broader bandwidth requirements. In fact, GO plc, as the current designated undertaking responsible for the provision of access at a fixed location is currently replacing all dial-up modems with broadband connections at a more favourable price nationwide to its subscribers on its own accord.

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.

The MCA reserves the right to monitor and review this decision in accordance with its powers at law to ensure affordability

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.

Updated September 2011:

In June 2011 the MCA published the decision "*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*". This document establishes *inter alia*

that if an end-user requests it, the universal service provider designated to provide access at fixed location is required to provide the connection at a guaranteed access line speed of 4 Mbps. If this connection does not permit the provision of such broadband Internet access for technical or economical reasons, and no alternative offering is readily available on the market under comparable conditions to the end-user requesting the connection, the universal service provider is allowed to provide the connection at a speed that is lower than the access line speed specified above. In these exceptional cases, the access line speed must not be lower than 2 Mbps.

The USP must have regard to the overall target of 97% for the total number of installed telephone lines capable of meeting or exceeding the established reasonable minimum data rate of 4 Mbps.

Further requirements in relation to Functional Internet Access can be found in more detail in the above mentioned decision.

Decision 1a

At the request of the end-user, the universal service provider designated to provide access at a fixed location is required to provide the connection at guaranteed access line speed of 4 Mbps. If the connection does not permit the provision of such broadband Internet access for technical or economical reasons, and no alternative offering is readily available on the market under comparable conditions to the end-user requesting the connection, the universal service provider is allowed to provide the connection at a speed that is lower than the access line speed specified above. In these exceptional cases, the access line speed must not be lower than 2 Mbps.

The USP must have regard to the overall target of 97% for the total number of installed telephone lines capable of meeting or exceeding the established reasonable minimum data rate of 4 Mbps*.

**Further details on the requirements in relation to Functional Internet Access can be found in the decision "Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access" published by the MCA on the 1st of August 2011.*

3.2 Directory Enquiry Services and Directories

As provided by the regulations, the designated undertaking/s shall ensure:

- 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
- That a comprehensive telephone directory enquiry service is made available to all end-users, including users of public payphones.¹²

In its consultation the MCA had proposed that the 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 the provision of directory services, insofar as it is compatible with the current regulatory framework, and not superseded by the directives emanating from the eventual decision.

One of the respondents expressed its opinion that any incompatibilities between the MCA decision of July 2002 and this USO decision, should be pointed out to avoid misunderstandings. In this regard, the MCA plans to publish an updated decision on Directory Information Services, and has recently published the consultation '*Wholesale Access to Data for the Provision of Publicly Available Directory Enquiry Services and Directory Services*'. This consultation deals with directory services related general authorisation requirements, contractual obligations between service providers, subscriber rights, and the rights of directory service providers to access directory related subscriber data. Once this decision is published it shall also be applicable to those undertakings designated to provide the directory services related universal services, including the electronic comprehensive directory; the printed telephone directory; and the telephone directory enquiry service.

All the other elements of the MCA decision entitled '*Directory Information Services – Report on Consultation and Decision*' of 2002 shall continue to apply insofar as they are compatible with the framework and not superseded by any of the above mentioned decisions or any other directive.

¹² LN412 of 2004, Regulation 27(1)

3.2.1 Directories

Electronic Comprehensive Directory

The MCA notes that a comprehensive directory as required by law is currently being provided in an electronic format by GO. This directory which has been available to the general public since 2006, includes telephone numbers of subscribers of all publicly available telephony service providers, and is being provided in the form of an online electronic directory which is accessible through GO's website.

All of the authorised publicly available telephone service providers must ensure that the undertaking designated to provide this universal service is given the right to access the directory services data related to their subscribers for the sole purpose to be in a position to offer this universal service except of those that opted for an ex-directory status. This is subject to the lawful requirements regulating the protection of personal data and privacy. Once the decision on "Wholesale Access to Data for the Provision of Publicly Available Directory Enquiry Services and Directory Services" is published these same rights would also apply to all entities authorised as "Publicly available directory enquiry services and/or directories"

Decision 2

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

All telephony providers shall ensure that their subscribers' directory service related data is made available to the designated undertaking for the sole purpose of providing directory services.

Printed telephone directory

In a decision published in July 2002, the MCA had directed GO plc to publish a new printed telephone directory containing fixed-line telephone numbers.¹³ This directory was to be distributed free of charge to every subscriber of fixed-line telephony services, keeping in mind that GO plc, formerly Maltacom plc, was the only service provider offering fixed line telephony on the island at the time.

¹³ 'Directory Information Services - Report on Consultation and Decision'

As specified in its proposed decision, the MCA considered 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. This document also considered that if there is an obligation to provide such a directory as part of the universal service, it should not be limited to GO subscribers but also include other fixed line subscribers.

It was determined that if a printed directory was not made available, it could negatively impact those subscribers not having access to the electronic directory. On the other hand, the MCA also needed to ascertain that the benefits derived from a printed directory would outweigh the potential costs involved which could be substantial.

The MCA also considered it pertinent to evaluate an alternative solution to the printed directory by proposing the facility for fixed subscribers the entitlement of at least one free call per week to a 118X directory enquiry service number as a universal service.

In order to be in a better position to evaluate such an alternative solution, and to acquire information on public opinion in relation to the availability of the printed telephone directory, the MCA commissioned Informa Consultants to undertake a survey using a sample methodology representative of the Maltese population prior to publishing the proposed decision. The main objectives of this survey included the identification of the frequency of use of the printed directory, the perception of the public on the relevance of such a directory, their views on the environmental impact it would create, the mentioned alternative solution, and the likelihood of people purchasing it.

Based on the findings of this survey, which were presented in more detail in the proposed decision, it is evident that if the printed directory had to be ceased it would predominantly impact people aged 50 years and over. The survey also established that the large part of the population, including those in the same age group, are of the opinion that alternative solutions, such as calls to a 118 number as mentioned earlier, could have been adequate.

Taking all this into consideration, in its proposed decision the MCA sought the opinion of the various stakeholders and general public on their views on how or whether the printed directory should be treated in the scope of the Universal Service. To achieve this, the following options were brought forward:

- The provision of a printed directory which would include telephone numbers of all fixed telephony subscribers free of charge and updated at least once every five years.
- The provision of a printed directory which would include telephone numbers of all fixed telephony subscribers at a reasonable cost and updated at least once every five years.

- At least one call per week to a 118X directory service free of charge to be provided by every undertaking of fixed telephony.

The printed directory element in the proposed decision has enticed a considerable reaction from the general media during the consultation process. A number of articles and letters from the general public on the subject were published in various daily newspapers. The sentiments on this issue were varied and at times it was also misinterpreted that the MCA was proposing not to include the printed directory as a universal service. The sole objective to provide a number of different options in the proposed decision was to gather more information on the advantages and disadvantages of including the printed directory as a universal service. All the respondents to the proposed decision, as listed in section 2 of this document, provided the MCA with feedback on the printed directory. The majority are of the opinion that it should be made available to subscribers of all fixed telephony service providers.

One of the respondents stated that a printed directory should be distributed to all fixed subscribers free of charge and updated yearly, whilst another agreed that the printed directory should be distributed either free of charge, or at a reasonable price, and updated every five years. There was also feedback highlighting the survey's result in which subscribers in the older age bracket perceive the printed directory as still valid and useful and that charging the elderly may seem incorrect. Another option brought forward by respondents was to allow subscribers to apply in writing that they require a copy of the directory, and the notion that it is provided at a charge could also be considered reasonable, especially from an environmental perspective

Another respondent also vouched for the validity of the availability of the printed directory, and also believes that it would be viable for an entity to publish it and claims it would not serve as a financial burden. It is also of the opinion that the printed directory could include information on Fixed and Mobile telephony subscribers including other relevant information such as e-mail addresses and websites. They believe that there is substantial consumer interest and business sense to produce such a directory on an annual basis.

One respondent noted that according to the commissioned survey the majority of the Maltese do not use a printed directory; to this effect it does not see the need for it to be included as a universal service. The fact that the majority of the survey respondents are also concerned on the environmental impact that would emanate from such a directory was also highlighted. In response to the vocal minority still believing that the directory should possibly be available in the form of an almanac, it stated that the directory's scope is to inform on telephone numbers not to serve as a source for mailing lists or to search for post codes. The same respondent expressed its view that since an electronic format of the directory is available, the MCA should have included the option of not having a printed directory as a universal service as one of the possibilities in its proposed decision.

Two of the entities providing feedback to the proposed decision have expressed their disagreement with the free call to a 118X number alternative solution option, due to the difficulty to implement such a service both from a technical and a practical perspective. They also claim that such an option would negatively impact a large percentage of the revenue derived from such a service which help maintain its sustainability.

Following the analysis of the feedback received on the proposed decision, the outcome emanating from the above mentioned commissioned survey, and the interest shown by a number of entities to publish such a printed telephone directory, the MCA has decided to include, once again, the printed directory as a universal service. This directory which should include, as a minimum, telephone numbers of all fixed telephony subscribers¹⁴, shall be provided and distributed free of charge to subscribers of all fixed telephony service providers, and shall be updated at least once every five years.

In the past, GO (formerly Maltacom), as the designated undertaking to provide the printed directory, was only allowed to include an exceptionally limited amount of commercial inserts in the printed directory. To this effect, the substantial costs to publish a printed directory could not be covered rendering an updated version not viable.

The MCA is confident that an acceptable standard for the presentation of the printed directory may be maintained even if the amount of the commercial inserts included in the publication is more widespread. To this effect undertakings wishing to express their interest to provide the universal service, would need to include in their expression of interest a detailed description on how they plan to formulate the printed directory, including details on how the commercial inserts are going to be presented. This is in line with the Designation of the Universal Service Provider section 4 of this document in which "*a detailed description on how the provision of the universal service shall be fulfilled*" is being considered as one of the main designation criterion.

The undertaking designated to provide the printed telephone directory shall be eligible for accessing, from all telephony operators, subscriber directory related information unless the subscriber in question has opted not to feature in any directory service.

¹⁴ This is subject to the lawful requirements regulating the protection of personal data and privacy.

Decision 3

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. The said printed directory shall be provided and distributed 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.

All telephony providers must make their subscribers' directory service related data available to the designated undertaking for the sole purpose to be in a position to fulfil its obligation.

3.2.2 Telephone Directory Enquiry Services

Whilst GO plc was the only organisation designated to provide Telephone Directory Enquiry services prior to this decision, the MCA has also allocated a number of short codes in the 118X (a numbering range designated specifically for directory enquiry services) to various entities providing this service as portrayed in the National Numbering Allocation Plan. These services are available to the general public against a charge, even by the designated operator, as permitted by law since the universal service regime does not require the service to be available for free but at affordable rates. Once the decision on "*Wholesale Access to Data for the Provision of Publicly Available Directory Enquiry Services and Directory Services*" mentioned earlier is published, these same rights shall also apply to all entities authorised as "*Publicly available directory enquiry services and/or directories*".

The undertaking designated to provide the Telephone Directory Enquiry Service shall be automatically eligible for accessing, from all telephony operators, subscriber directory related information utilising the system being used by the industry. This is subject that the subscriber in question has not opted out to feature in any directory service.

Decision 4

The universal service shall include the provision of a comprehensive telephone directory enquiry service made available to all end-users, including users of public payphones at an affordable rate.

All telephony providers shall ensure that their subscribers' directory service related data is made available to the designated undertaking for the sole purpose of providing directory services.

3.3 Public Payphones

In its proposed decision the Authority gave an overview on the legal framework concerning public payphones. It referred to the definition of “public Pay telephone” in the Act, and the Regulations which state that the Authority may specify terms and conditions applicable to the provision of public pay telephones for the purpose of ensuring they 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 service.

It was also established, as required by law, 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.¹⁵

The decrease experienced in public payphone usage is undoubtedly a direct result of the rise in mobile subscription. However, for those users that do not have access to a landline or a mobile phone, or possibly whose phone powering has ran out, the availability of public payphones is important especially in the case of emergency where there are no other means of communication at hand.

In its consultation the MCA proposed a decision in which the designated undertaking providing this universal service shall ensure that payphones shall

¹⁵ LN412 of 2004, Regulation 28(4); USD 2002/22/EC, Recital 12

continue to be provided at the same frequency and geographical coverage as is currently the case.

In terms of feedback to the proposed decision, one of the operators agreed that public payphones should not be reduced in number, whilst another respondent stated that the argument in which the same number of payphones should be maintained irrespective of the fact that the usage has gone down substantially falls short of the regulatory standards. To substantiate this argument, the same respondent provided statistics on the increase in fixed subscribers and mobile penetration since the publication of the last USO decision. It argues that it would be logical and reasonable to expect that the requirement for public payphones should be synchronised with the change in market penetration as is the case in other EU countries.

This respondent also claims that in terms of the density of payphones in Malta compared to other EU countries, it is clear that it is oversupplied and that a substantial number of these public payphones are unused for long periods spanning several months and sometimes only generating a few Eurocents per month in terms of revenue.

Reference was also made to Article 6(2) of the Universal Service Directive in which the National Regulatory Authority can decide not to impose obligations to ensure public payphones are provided, if it is satisfied that these facilities or comparable services are widely available. The respondent is of the opinion that this should be applied in the case of payphones in Malta, and if it is not the case, at the very minimum the number of public payphones should be allowed to be reduced significantly.

Whilst the MCA agrees that the usage and dependency on public payphones has decreased substantially since the last USO decision, and that some comments made on this are justifiable, on the other hand it deems that the provision of public payphones should still be considered as a universal service to meet the social needs of a number of end-users.

Following a thorough analysis, the Authority has decided to retain its position taken in the proposed decision in which public payphones should continue to be provided at the same frequency and geographical coverage as is currently the case. However due to the logistical and financial issues brought forward in the feedback it received, the MCA decided to include the possibility to consider on a case by case basis any application by the universal service provider to remove a public payphone. To ensure proportionality each decision on whether individual payphones may be removed or not, shall be taken using a 'cost benefit analysis' approach keeping in mind the financial and social need perspectives.

The designated undertaking is required to inform the local council in question before placing its application with the MCA to remove a public payphone. Such an application to the MCA must include:

1. The exact location
2. Distance for any other payphone/s in working order located in the same and adjacent localities
3. Utilisation Rates including details of calls, and volumes in minutes and revenues
4. A comparison with average national payphone utilisation rates

As a general rule the MCA is of the opinion that applications for removal of payphones would be only considered subject that the minimum number of payphones per type of locality depending on the population figures as listed below are satisfied:

- Minimum of 2 payphones per locality with a population of <4,000
- Minimum of 3 payphones per locality with a population of <10,000
- Minimum of 4 payphones per locality with a population of >10,000

The above parameters do not release the designated undertaking from the requirement to maintain additional public payphones, as may be required, to meet particular consumer needs.

Once an authorisation for the removal of a public payphone is issued, the designated undertaking would be subject to any other authorities' requirements and could also include certain conditions which would be applicable on a case by case basis. These conditions could include the obligation to publish or display a number of notices prior to each public payphone removal, and other measures as deemed necessary from time to time by the Authority.

The Authority does not rule out the possibility of granting permission for the removal of a public payphone which do not satisfy the mentioned criteria or vice versa. This however shall only take place in exceptional cases.

The MCA's decision on an application for the removal of a public payphone is final and refusals shall be accompanied with an explanation.

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 designated undertaking may apply for the removal of individual public payphones on a case by case basis to the MCA in accordance with the above-mentioned parameters.

3.4 Specific Measures for Disabled Users

The regulations stipulate that the MCA may specify obligations 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.¹⁶

3.4.1 Specialised Handsets

In the Universal Telecommunications Services decision of 2003, GO, formerly Maltacom, was designated as the universal service provider for measures for disabled users at fixed locations. It was given the responsibility of providing special terminals, including text telephones, amplified telephone sets and large-button telephone sets for disabled users and was also directed to continue providing 'Telecare' services in 2004 until further notification.

In its proposed decision 6, the MCA had proposed the designated undertaking to make specialised handsets available to persons with disability at a fixed location at affordable rates. These included handsets which allow a hearing aid to be connected to the set; amplified telephone sets with the possibility of increasing the level of either incoming or outgoing speech; portable amplifiers attached to the telephone handset amplifying incoming speech; tone callers that increase the telephone's ringing tone; silent call indicators which flashes a bright light when the telephone rings; large button telephone sets which include a large keypad designed for visually impaired persons; text telephones in which a conversation may be typed displayed on screen.

¹⁶ LN412 of 2004, Regulation 29(1)

One of the respondents of the proposed decision declared that it is not against specific measures for disabled users, however it cautioned against setting *a priori* a long list of handset types. Since it transpires that the above mentioned specialised handsets are widely available on the market, with the exception of the 'Telecare' service which is being addressed in a separate sub-section in this document, the MCA decided to waive the obligation on the designated undertaking to provide specialised handsets as provided in the Universal Service Directive. It states that Member States shall ensure that the relevant authority is able to waive the requirements of a universal service in all or part of its national territory if it is satisfied that such a facility is widely available¹⁷.

3.4.2 Itemised Billing in Electronic Format compatible with speech narration software

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 was covered in the proposed decision 7.

One of the entities that provided feedback is concerned that this proposed decision was being made without any prior knowledge about the huge costs and logistics that are involved to maintain such a universal service. In its opinion it is an example of regulatory over reach and should be removed.

The MCA considered the contents of the feedback it received, and confirmed that the introduction of such a service would be cumbersome on the service provider implementing such a service. It also considered that off the shelf speech narration software can be acquired by the end-user easily since it is widely available and that such software is also integrated in a number of operating systems. To this effect, the MCA decided to waive this proposed universal service obligation. Notwithstanding, the Authority encourages operators' customer care service centres to whenever possible assist people claiming to be visually impaired in billing queries.

3.4.3 Free directory enquiry services for visually impaired persons

Proposed Decision 8 stated that special directory enquiry arrangements to use the directory enquiry services free of charge should be made available to visually impaired persons.

Whilst in principle one of the respondents is not opposed to this proposal it believes that it should not be implemented in an open format. The number of

¹⁷ USD 2002/22/EC, Article 10(3)

free calls to directory enquiry services should be limited, and that there should be a robust mechanism to confirm the users' qualifying criteria.

The Authority is of the opinion that the suggestion to cap the number of calls is justifiable on the premise that visually impaired persons use the directory enquiry service on par with the general public. To this effect the MCA decided to use the same criteria adopted when it included an alternative solution to a printed directory in its consultation by providing for one free of charge call per week to a directory enquiry services number.

Only persons that appear on an official list sent periodically by the responsible Ministry or Government Department to the designated undertaking shall qualify to benefit from this universal service. Once the designated undertaking considers that the number of people using this facility is excessive, to the extent that it deems it an unfair burden and requires funding to sustain it, it shall inform the MCA accordingly. In turn the Authority shall decide whether such a list would be capped to a maximum number of people, and if this is not the case, funding option would need to be considered.

Decision 6

The universal service shall include the provision of one call free of charge per week to a directory enquiry service number of the designated provider's choice to eligible visually impaired persons which are included in a list specifically provided by the responsible Ministry or Government Department.

3.4.4 'Telecare' type of service

A universal service to include the provision of a 'Telecare' type of service allowing easy access to an emergency service was also included in the proposed decision. This service would include the provision of an alarm unit that may be activated by a large button on the telephone set and also by means of a small button which is located on a portable pendant. The alarm unit would automatically dial the Control Centre once it is activated.

In its feedback, one of the respondents stated that it has strong reservations on the manner this universal service is operated. Besides believing that the current capping should be reduced to more realistic levels, the qualifying criteria should also be tightened. It was also brought to the MCA's attention that the designated undertaking has experienced substantial losses of expensive Customer Premises Equipment (CPE) which is often not returned or is not traceable. This respondent also claims that such a service may only continue to be provided if the designated operator is certain that the CPE is either recovered or reimbursed.

Following the proposed decision, the MCA held a number of meetings and various communications with GO as the current designated undertaking providing the 'Telecare' service. This took place to enable the Authority compile vital statistics and general information to acquire a better understanding on the current 'Telecare' usage. The MCA appreciates that the designated undertaking should not incur the costs of misplaced CPEs and it considers the requirement for a nominal deposit to be applicable for all new 'Telecare' subscribers, as an acceptable solution to the problem. This deposit should only apply to all the new 'Telecare' subscribers who are not benefiting from the reduced tariff scheme currently in place for social reasons.

If the number of misplaced CPEs pertaining to those subscribers who are benefiting from the reduced tariff scheme is high, with the effect that the designated undertaking is incurring a substantial cost, it shall inform the Authority accordingly. In turn, the MCA, in conjunction with any other relevant authorities, shall decide whether a deposit should start being collected from an alternative source. Other options may also be considered, including the responsibility to manage the hardware stock to a separate entity.

From the above mentioned communication between the MCA and GO it also transpired that a significant number of 'pendants', which is the device subscribers wear for ease of access (referred to as a portable small button in the proposed decision), are being misplaced to the detriment of the designated undertaking since they are being replaced at no cost to the subscriber. The MCA is of the opinion that this is not reasonable and it could be charged for at cost either by deducting the cost from any deposit received or charged directly to the subscriber in question.

Decision 7

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

The designated undertaking may collect a nominal deposit for all new 'Telecare' subscribers who are not benefiting from the reduced tariff scheme.

Any misplaced, lost, or damaged 'Telecare Pendants' shall be replaced against a reasonable charge that may be levied by the designated undertaking , or deducted from any deposit collected, to cover its cost.

3.5 Provision of Reduced Tariff Options for Users

It has already been established that all persons should be in a position to make use of telephony services even at a basic level. To complement this the MCA is authorised to designate an undertaking to provide reduced tariff options or packages to persons considered as vulnerable, which include those on low income or those with special social needs.¹⁸

Besides being maintained by the various means of regulatory mechanisms, the affordability of telephony is also a natural consequence of a competitive market. Although this contributed to a substantial decrease in fixed telephony tariffs since the last USO decision, the MCA believes that there is still scope to retain the universal service. This would ensure the provision of reduced tariff options which would contribute to render telephony affordable to consumers, especially those vulnerable users described earlier.

One of the respondents commented that the proposed decision does not consider in full the implications set in the universal service directive, and claims that the preferred method would be one where support is given by the state directly. It invited the MCA to carry out a comprehensive evaluation exercise based on the one carried out in the past by other government-owned monopoly providers of other types of services. It also deems that strict determination criteria are warranted.

Although the MCA does not rule out any future action in line with the suggestions brought forward by the respondent, the MCA decided that the universal service should be maintained in its current format, bearing in mind the funding options depicted in section 5 of this document, which enables the designated undertaking to apply for funding if it deems justified.

As the currently designated universal service provider, GO does not charge any 'line-rental' related charges to a number of its subscribers which are considered vulnerable users by the responsible Ministry or Government department. The responsible entity supplies the designated undertaking with an updated list of people who are deemed qualified to benefit from this universal service. Such a measure which enables users to be accessible by telephone without having to incur any costs 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.¹⁹

Although any future action to consider introducing different methodologies is not being ruled out, the MCA believes that the scheme which currently is in

¹⁸ LN412 of 2004, Regulation 31(2)

¹⁹ USD 2002/22/EC, Recital 4

place successfully contributes to render the universal service affordable to consumers, especially vulnerable users on low incomes or on special social needs. To this effect the MCA is thus of the view that the universal service should continue to operate on these basis.

Decision 8

The designated undertaking shall provide reduced tariff options which would contribute to render the universal service affordable to eligible consumers, especially vulnerable users on low incomes or with special social needs which are included in a list specifically provided by the responsible Ministry or Government Department.

3.6 Ensuring Users can Control Expenditure

Since the ability to be able to monitor and control expenditure also contributes towards ensuring affordability²⁰, the designated undertaking/s are required to provide the means to achieve this goal. The Regulations lists the following facilities and services in order to empower the customer to monitor and control expenditure.²¹

3.6.1 Itemised billing

The MCA decision entitled 'Itemised Billing by Telecommunications Operators' published in 2002²² states that all operators providing public telephone networks or services are required to provide as a minimum the defined level of itemised billing at no additional cost. This decision applies 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 attempt made by the MCA to maintain stability in the regulatory obligations governing this subject was welcomed by one of the respondents; however it also pointed out that the designated undertaking and other service providers already provide itemised billing and queried whether this particular universal service is still required.

²⁰ USD 2002/22/EC, Recital 10

²¹ LN412 of 2004 Fifth Schedule, Regulation, 32(2) USD 2002/22/EC, Recital 15

²² -MCA Decision, "Itemised Billing by Telecommunications operators" DN01/02, 11th January 2002

Since all telephony service providers are providing the defined level of itemised billing at no extra cost as stated in the decision mentioned above, the MCA shall not be designating any particular undertaking to provide this universal service.

3.6.2 Selective call barring for outgoing calls, free of charge

In relation to selective call barring, the fifth schedule of the Regulations provide for the facility which allows a subscriber to request the telephone service provider to bar outgoing calls of defined types of numbers free of charge. 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.

One of the respondents stated that the types of calls that can be barred should be as limited as reasonably possible since it would be difficult for the subscriber to memorise them, and that a large number of barring categories would entail a substantial cost in software upgrade and support. It also stated that the requirement to provide barring facilities for off net calls does not appear to be either proportionate or reasonable.

The MCA decided that the designated undertaking shall provide the possibility for consumers to selectively block all outgoing calls, or those outgoing calls which incur a higher price when compared with tariffs normally applicable to calls to fixed telephone numbers. This service, which shall be provided free of charge, should include the possibility to bar outgoing calls to international destinations and premium rate services.

This decision is being presented without prejudice to any other future decisions or directives that may be published by the MCA which could extend such obligations to other operators in accordance with the law. These could also include call barring facilities to specific numbers due to their content as specified by the Authority.

Decision 9

The designated undertaking/s shall provide a call barring facility free of charge to block:

- a) mobile calls**
- b) international calls**
- c) premium rate services**
- d) all outgoing 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.

**Calls to emergency services '112' should never be barred. Calls to "free to caller" numbers should not be barred when technically feasible.*

3.6.3 Prepaid services

As part of the facilities available for the consumer to control expenditure, the Regulations and the Universal Service Directives empowers the Authority to require a designated undertaking to provide the means for consumers to pay for access to the public telephone network and use of publicly available telephone services on pre-paid terms.

This universal service is currently being offered by GO by means of a prepaid service called 'Easyline' allowing subscribers to pay for each call in advance rather than pay rent or receive a bill for previous calls . 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 is of the view that a designated undertaking should continue to provide a prepaid service allowing subscribers to pre-pay for calls rather than pay rent or receive a bill as in the case of the 'Easyline' service currently being provided by GO.

Decision 10

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

3.6.4 Spending Thresholds

In its proposed decision the MCA considered introducing an alert system to be provided by the designated service provider when a predefined limit of expenditure selected by the subscriber is exceeded or when an abnormal calling pattern occurs.

One of the respondents claimed that the proposal goes well beyond the requirements of the Universal Service Directive which explicitly states that this does not warrant a requirement, and that affordability is more than adequately provided by means of other universal services covered earlier in this section. With regards to the high bills generated as a result of 'rogue diallers' as described in the decision, and a quoted report that appeared on the media following the publishing of the proposed decision, it stated that this is not anymore an issue due to the decline of dial-up modems being replaced with broadband connections. On the issue of calls to premium rate services it claimed that subscribers have the facility to ensure that no such calls are made without their consent.

The same respondent suggested that the proposed decision should be dropped. It appears to emulate the provisions currently in place for roaming, and is neither reasonable, proportionate or within the boundaries of universal services. It also mentioned that the costs involved to implement such a service would be huge and involve complex data protection and logistical issues. It claimed that if the MCA and the service providers had to educate the users on the measures they can take, including the tools they can use to ensure they do not receive unpleasant surprises in their bill, would be far more effective and proportionate.

After taking all this into consideration the MCA has decided not to impose this universal service, however it commends that whenever possible service providers should do their utmost to provide their subscribers with such a Spending Threshold service whenever possible. The Authority is aware that occasionally some of the service providers are already actively providing such a service to particular subscribers using a manual system due to the costs involved.

4 Designation of the Universal Service Provider

4.1 General

As stated earlier in this document and as provided in the Regulations, the Authority may designate different undertakings or sets of undertakings to provide different elements of the universal service. In designating an undertaking the MCA shall adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is *a priori* excluded from being designated.

4.2 Designation Period

The MCA intends to review the designations contained in this decision within two years from the date the new designations start providing the universal services. It also reserves the right to review them outside this timeframe as and when it deems it appropriate in accordance with its regulatory powers and responsibilities, which may include any national transpositions in line with any revised EU frameworks.

Decision 11

The MCA intends to review the designations contained in this decision within two years from the date the new designated undertakings provide the universal service. It reserves the right to review these designations outside this timeframe as it deems appropriate according to its powers at law.

4.3 Criteria for Designation

It has been established that the Authority may designate different undertakings or sets of undertakings to provide different elements of the universal service. Considering that the market has experienced a number of new entrants since the publication of the last Universal Services Decision, the possibility that all or part of the universal service obligations could be provided by other operators other than the current designated undertaking is more of a reality.

The main criteria according to which the MCA shall assess which undertakings shall be designated to provide all or part of the universal service are:

- The technical competence and expertise in providing the service;
- Willingness to provide the service and in which format;
- Network Integrity and Service Continuity and Quality;
- Cost Effectiveness and Cost Efficiency.

4.3.1 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.²³

The experience gained by an undertaking which has been designated to provide a universal service in the past, would be taken into consideration when the MCA assess its technical competence and expertise. However, the MCA shall still examine to the full any expression of interest by any entity interested to provide a universal service independently of its experience as long as the criteria for such a designation are satisfied.

The above denotes that an undertaking with a significant market power status, or experienced in providing a universal service shall not be automatically designated to provide the universal service without giving this opportunity to other applicants.

4.3.2 Willingness to Provide the Service and in which Format

It has been established that the willingness of an undertaking to provide a particular element of the universal service should be taken into account as a positive element when the MCA is designating a universal service provider.

There could be likely scenarios in which no potential undertaking shows interest in providing a particular, or some of, the Universal Services identified earlier in this document. Notwithstanding the lack of such willingness, the Authority is still responsible to ensure that such universal services are made available to the public. To this effect, in section 4 "Designations in Default of Expressions of Interest" of this document, the MCA is designating an undertaking to be responsible for providing each of the universal services.

²³ Directive 2002/22/EC, Recital 14

4.3.3 Network Integrity and Service Continuity and Quality

The ability of the undertaking to maintain the integrity of the network, as well as service continuity and quality, is being considered as an important designation criterion as indicated by the Directive.

4.3.4 Cost Effectiveness and Cost Efficiency

The Universal Service Directive and the Regulations state that the designation methods adopted shall ensure that universal services are provided in a cost effective manner and may be used as a means of determining the net cost.

The cost efficiency element is also essential in order that users pay prices that generally correspond to efficient cost provision. The MCA is obliged to seek the provision of universal services at prices that do not depart from normal commercial conditions while safeguarding the public interest, unless the universal service specifies that it should be provided free of charge, keeping in mind any other applicable terms and conditions.

Although it agrees with the assessment criteria, one of the respondents is of the opinion that they entail a significant burden on the designated undertaking, and they do not take into consideration the potential lack of interest from entities willing to provide the universal services. It also commented that the clear references to GO plc in the proposed decision leaves little doubt that the undertaking has already been chosen, even though not announced officially.

As stated earlier in this section, the MCA recognises that there could be scenarios in which no potential undertakings would show an interest to provide a particular, or some of the Universal Services. However it was also established that the Authority must take into consideration the fact that new entities could show an interest in providing any of the universal services. To this effect it is considered imperative that a detailed designation criterion is established.

Decision 12

The main 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 and in which format**
- **Network Integrity and Service Continuity and Quality**
- **Cost Effectiveness and Cost Efficiency of the Service**

As determining factors in the designation criteria, cost effectiveness and cost efficiency shall be assessed on the following main elements:

- the pricing of the service, if applicable
- the extent to which any proposed pricing would cover the net costs of the service
- whether the service shall be provided without claims for funding, or alternatively the extent to which the provision of the universal service can take place without claims for funding.

4.4 Call for Expressions of Interest

The MCA invites any person or entity interested to provide a universal service, or part of, to express their interest formally in writing to the Authority by the 30th June 2010. This shall also apply if the undertaking designated to provide the related universal service from the previous decision is willing to carry on providing this service as the universal service provider. An expression of interest should be submitted even if the entity is listed as the designate provider for the universal service in question, in default of a call for expressions of interest as depicted in the following section.

The criteria elements covered in section 4.2 shall be taken into account in the designation of an undertaking. Whether an expression of interest is received by one, or a number of applicants, the Authority shall adopt an efficient, objective, transparent and non-discriminatory designation mechanism.

4.4.1 Administrative Procedure for submitting Expressions of Interest

Enquiries

Enquiries concerning the expressions of interest should be made to: uso.ecs@mca.org.mt with the understanding that both question and answer will be published on the MCA's website.

Submission of Proposals

For an expression of interest to be considered, it should be received by the MCA by 12:00 noon Malta time on Wednesday, 30th June 2010. Any expression of interest received after the deadline for submission will be rejected.

Following the expiry of the deadline for submissions, the MCA reserves the right, to request additional information or clarifications. At the discretion of the MCA, organisations submitting expressions of interest may be requested to make oral presentations as part of the evaluation process.

Part 1 – Technical Proposal

A master copy together with an electronic copy, which should include the following:

i. Title Page

The title page showing the expression of interest subject; the organisation's name, address and telephone number of a contact person; and the date of the expression of interest.

ii. Table of Contents

iv. Detailed Proposal

All expressions of interest should be accompanied with the following:

- Proof of the ability and technical competence in providing the service
- A detailed description on how the provision of the universal service shall be fulfilled
- Proof of network integrity, service continuity and quality if applicable
- Details on the proposed pricing of the service, and to what extent this pricing will cover the costs of the service and if claims for funding are envisaged

Part 2 – Submission of Proposal

Proposals should be addressed to:

*The Chairman
(Attn: ECS USO Expressions of Interest)
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913*

and marked with:

*'Expressions of interest for Universal Service Obligations on Electronic
Communication Services'*

Following the established deadline of 30th June 2010, the MCA shall evaluate all calls of expression of interest by adopting an adjudication process that ensures an efficient, objective, transparent and non-discriminatory designation mechanism as required at law. Such an evaluation shall be carried out by the Authority in the shortest timeframe possible but not to the detriment of the mentioned designation prerequisites.

Once the MCA designates the undertaking to provide a universal service it shall update Annex 1 entitled "List of Designated Undertakings" of this document and publish it.

Decision 13

Entities willing to provide, or carry on providing a universal service, or part of, shall express their interest formally in writing to the Authority in accordance with the above administrative procedures by the 30th June 2010.

All expressions of interest should be accompanied by:

- **Proof of the ability and technical competence in providing the service**
- **A detailed description on how the provision of the universal service shall be fulfilled**
- **Proof of network integrity, service continuity and quality if applicable**
- **Details on the proposed pricing of the service, and to what extent this pricing will cover the costs of the service and if claims for funding are envisaged**

Once a designation takes place, Annex 1 of this document shall be updated to include the name of the entity providing the universal service*.

**Decisions 1 – 10 above shall come into force only once the respective designations take place.*

4.5 Designations in Default of Expressions of Interest

In the previous section it was established that any persons or entities willing to provide a universal service have the opportunity to formally express their interest to the Authority. In default of expressions of interest the MCA is designating the undertaking to be responsible for providing each of the following universal service.

One of the respondents commented that in the proposed decision there was no attempt to explain how the MCA reached the conclusion that GO should be the designated operator provider in all of the cases. As the service provider with the technical capability, experience and knowledge acumen which it acquired over the years as the universal service provider, the MCA is of the opinion that in the absence of expression of interest GO is the obvious choice to be designated.

4. 5.1 Designation for the Provision of Access at a Fixed Location

GO is being designated to continue providing this universal service in default of expressions of interest or in the case when expressions of interest fail to satisfy

the criteria as defined in the 'Criteria for Designations' section. Its widespread network coverage and its considerable experience in the provision of access and connection at a fixed location were taken into consideration. As the designated universal service provider, GO has also been subject to Quality of Service reporting based on the European Telecommunications Standards Institute's Quality of Service Parameters²⁴ and also subject to obligations of network integrity and service continuity.

Decision 14

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA is designating GO as the undertaking responsible for providing the universal service with respect to the provision of access at a fixed location in line with *Decision 1* of this document.

4.5.2 Designation for the Provision of Electronic Comprehensive Directory

GO has been providing a comprehensive directory as required in an electronic format which is accessible through GO's website since 2006. It is in possession of all the required contractual agreements with the other operators in order to provide this service in place. To this effect GO is being designated to continue providing this universal service in default of any expressions of interest.

Decision 15

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA is designating GO as the undertaking responsible for providing the universal service with respect to the Electronic Comprehensive Directory in line with *Decision 2* of this document.

4.5.3 Designation for the Provision of the Printed Directory

In absence of any expressions of interest received within the stipulated timeframe, GO plc is being designated to provide the printed directory as a universal service. Besides having the largest fixed line subscriber base, GO has experience in the printing of the telephone directory, the last one published in 2004.

Decision 16

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA is designating GO as the undertaking responsible for providing the printed directory free of charge in line with *Decision 3* of this document.

4.5.3 Designation for the Provision of Directory Enquiry Services

GO has been successfully operating its 1182 Directory Enquiry Service at affordable rates for a number of years. To this effect GO is being designated to continue providing this universal service in default of any expressions of interest.

Decision 17

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA is designating GO as the undertaking responsible for providing the universal service with respect to provision of a comprehensive 118x directory enquiry service at affordable rates in line with *Decision 3* of this document.

4.5.4 Designation for the Provision of Public Payphones

Since GO has been providing public payphones throughout the Maltese islands for a significant number of years it is being designated to continue providing this universal service in default of any expressions of interest.

Decision 18

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing the universal service with respect to public payphones in line with *Decision 5* of this document.

4.5.5 Designation for the Provision of Specific Measures for Disabled Users

GO has been providing services for disabled users for a number of years. As specified earlier in this document the MCA decided to waive a number of services falling within the scope of specific measures for disabled users due to proportionality reasons, and because some of the specialised equipment required is widely available in the local market. Furthermore, in default of the provision of expressions of interest, GO has been designated to provide the universal service with respect to directory enquiry services for visually impaired users, and a 'Telecare' type of service.

Decision 19

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing the universal service with respect to directory enquiry services free of charge for visually impaired persons in line with *Decision 6* of this document.

Decision 20

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing the universal service with respect to 'Telecare' type of service in line with *Decision 7* of this document.

4.5.6 Designation for the Provision of Reduced tariffs

As the previous designated universal service provider, GO has the experience and the ability to provide reduced tariff options. To this effect it is being designated to provide this universal service in default of any expressions of interest.

Decision 21

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing reduced tariff options in line with *Decision 8* of this document.

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

In the proposed decision this universal service included the provision of itemised billing; selective call barring, prepaid services and the introduction of spending thresholds, proposing GO to be the designated provider. In the related section in this document it was decided that the provision of itemised billing shall be waived. It was also decided that the spending threshold service will be excluded due to technical, cost related and logistical issues. Considering GO's experience in these matters and its wide network coverage, it is being designated to provide the selective call barring service and provide prepaid services options in default of any expressions of interest.

Decision 22

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing selective call barring in line with *Decision 9* of this document.

Decision 23

In default of expressions of interest by other undertakings within the given timeframe or in the case when expressions of interest fail to satisfy the criteria as defined in the 'Criteria for Designations' section, the MCA designates GO as the undertaking responsible for providing a Prepaid Service in line with *Decision 10* of this document.

5 Financing of Universal Service Obligations

5.1 General

The Regulations state that if an undertaking has suffered an unfair burden as a result of providing all or part of the universal service it may submit a written request for funding to the MCA.²⁵ Such a request shall be accompanied by supporting information as described in section 5.3 of this document to enable the MCA determine whether the universal service obligation represented has actually resulted in an unfair burden on the undertaking.²⁶

When the MCA is determining whether an undertaking has suffered an unfair burden, it shall evaluate the calculation of the net costs and supporting information submitted in line with section 5,3 also taking into account any market benefit which accrues to the undertaking as specified in more detail in the seventh schedule of the Regulations.

Where the Authority finds that an undertaking is subject to an unfair burden, it shall either introduce a mechanism to compensate that undertaking for the determined net costs from public funds with the approval of the government, or to share the net cost between providers of electronic communications networks and services. The source of funds can vary depending on the universal service for which these funds are being requested.

The MCA would also like to clarify that the current universal service designated provider may submit a request for funding as allowed by law for the universal service it has rendered until the new designated undertakings start providing the service following the expressions of interest and the designation process. Such a request for funding shall take place on the same principles mentioned earlier.

In January 2011 the MCA published the consultation on an amendment to this decision entitled "*Universal Service Obligations on Electronic Communication Services*". Prior to this consultation the MCA had issued a decision on the same subject in April 2010 following a public consultative process.

²⁵ LN412 of 2004, Regulation 34(1)

²⁶ LN412 of 2004, Regulation 34(2)

In the consultation issued prior to this amendment to the aforesaid decision the MCA invited interested parties to comment if the timeframe to request for funding had to be extended.

5.2 Time Period for which Funding may be requested

Until the publishing of this decision, there was no timeframe established in which an undertaking should request for funding. To avoid commercial and legal uncertainty, a timeframe for which a request for funding must be made is being established. If a designated undertaking is found to be suffering from an unfair burden, it would be unreasonable on tax payers or service providers that may have to contribute towards the funding mechanism for requests pertaining to services that took place in the distant past.²⁷

On the other hand, the MCA also identifies that the undertaking requesting for funding could only be in a position to establish if it had suffered an unfair burden whilst providing a universal service following an elapsed period of time.

In the proposed decision the MCA proposed that a maximum period of 6 months following the end of the previous financial year gives sufficient time for the undertaking to submit a request. One of the respondents did not agree and claimed that this timeframe is too short and should be extended to at least 9 – 12 months. When taking into consideration the number of current obligations on undertakings to present required regulatory accounting and statistical reporting within the same period, the maximum period of 6 months following the end of the previous financial year to submit a request was retained in the April 2010 Decision.

Following the publication of the decision, there were further claims from GO plc that the 6 month timeframe applicable in order to request for funding was still too short. The MCA took into consideration that this undertaking has been providing various universal service obligations for a number of years, and also the fact that the length of the timeframe was specifically set in order to compensate the designated undertaking suffering an unfair burden in the shortest time possible. As a result of this in January 2011 a consultation was published inviting interested parties to comment if this timeframe for the request for funding should be extended from 6 months to 9 months. No feedback pertaining to this consultation was received.

²⁷ According to LN412 of 2004, Regulation 35(1), the MCA may decide to introduce a compensation mechanism from public funds or one shared between providers of electronic communications networks and services

To this effect, decision 24 has been updated to reflect that any request for funding shall be sent in writing to the MCA by not later than **nine** months following the end of the financial year pertaining to the claimed unfair burden.

The MCA would like to highlight the fact that following a submission for funding, a complex workstream shall be initiated to assess justification on such a request as established in the Regulations²⁸.

Any requests for funding shall cover only the previous financial year and not extend to any prior periods.

Decision 24

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

5.3 Information to be provided in the Request for Funding

The undertaking submitting a request for funding shall provide the MCA with sufficient and detailed evidence supporting its claim that the provision of a universal service has resulted in an unfair burden and follow the requirements of the Seventh Schedule to the Regulations. Any market benefit accrued by the undertaking as a result of providing the universal service shall be taken into consideration when claiming its net costs.

The burden of proof for each Universal Service shall rest with the undertaking requesting the funding. The MCA reserves the right to request any other information, or more detail than that submitted by the undertaking if it deems it necessary to pass judgement.

²⁸ SL 399.28 , Regulation 34(3-7), 35, 36 & 37.

Decision 25

The undertaking requesting funding shall provide the MCA with sufficient and detailed 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 and follow the requirements of the Seventh Schedule to the Regulations. The burden of proof for each Universal Service shall rest with the said undertaking.

Philip Micallef
Chairman

15th April 2010 *(Updated 2nd March 2011)*

ANNEX 1

Current Universal Service Designated Undertakings

(based on the decisions found in this document)

PROVISION OF ACCESS AT A FIXED LOCATION

Access at a Fixed Location

GO plc - Designated July 2010

PROVISION OF DIRECTORY ENQUIRY SERVICES AND DIRECTORIES

Electronic Comprehensive Directory

GO plc - Designated May 2003

Printed Telephone Directory

GO plc - Designated May 2003

Telephone Directory Enquiry Services

GO plc - Designated July 2010

PROVISION OF PUBLIC PAYPHONES

Provision of Public Payphones

GO plc - Designated July 2010

PROVISION OF SPECIFIC MEASURES FOR DISABLED USERS

Directory Enquiry Services Free of Charge for Visually Impaired Persons

GO plc - Designated July 2010

Provision of a 'Telecare' type of service

GO plc - Designated July 2010

PROVISION OF REDUCED TARIFF OPTIONS

Reduced Tariff Options

GO plc - Designated July 2010

ENSURING USERS CAN CONTROL EXPENDITURE

Selective Call Barring

GO plc - Designated July 2010

Prepaid Service

GO plc - Designated July 2010

Updated November 2010