

## Designation of MaltaPost Plc as having Significant Market Power (SMP)

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### Decision Notice

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## Foreword

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Full market opening of the postal sector in Malta will take place on the 1<sup>st</sup> of January 2013, when the area reserved to MaltaPost Plc ('MaltaPost'), as the incumbent designated universal service provider ('USP'), will be completely abolished.

On the 1<sup>st</sup> of August 2012, the Malta Communications Authority ('MCA') published a consultation paper entitled 'Regulating the Postal Sector in a fully Liberalised Market – An *ex-ante* framework for the regulation of competition'.<sup>1</sup> This consultation paper outlined the MCA's proposed approach for regulating the postal sector in a fully liberalised market environment. Moreover, to give effect to the proposed *ex-ante* framework for the regulation of competition, the consultation paper proposed amendments to the Postal Services (General) Regulations (SL 254.01 of the Laws of Malta).

On the 1<sup>st</sup> of November 2012, the MCA published the response to consultation. The response to consultation provided the salient points of the feedback provided by the respondents to the issues and proposals raised in the consultation paper and the MCA's reflections on the feedback provided, together with conclusions and next steps.<sup>2</sup> The response to consultation also included the procedure for carrying out market reviews and the transitional provisions with regard to MaltaPost.<sup>3</sup>

Following the publication of the response to consultation, the MCA submitted the proposed amendments to the Postal Services (General) Regulations ('Regulations') to the Minister responsible for postal matters for approval and publication. The related amendments to the Regulations were published and brought into force on the 26<sup>th</sup> November 2012.<sup>4</sup>

In accordance with regulation 64B of the Regulations, the MCA shall determine whether postal operators have Significant Market Power ('SMP') taking into account any guidelines however described by the MCA. In addition, on the coming into force of the amendments to the Regulations, the MCA may designate MaltaPost, as the incumbent

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<sup>1</sup> Refer to the Consultation Paper (MCA/C/1143/12):

<http://www.mca.org.mt/consultation/regulating-postal-sector-fully-liberalised-market-consultation-mcac114312>

<sup>2</sup> Refer to Response to Consultation and Next Steps (MCA/O/12-1397):

<http://www.mca.org.mt/article/regulating-postal-sector-fully-liberalised-market-response-consultation-document-and-next>

<sup>3</sup> Refer to **Appendix 01 – A Market Review Procedure for the Postal Sector** of the Response to Consultation and Next Steps.

<sup>4</sup> Refer to amendments to the Postal Services (General) Regulations - Legal Notice 408 of 2012:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=24140&l=1>

designated USP, as having SMP in any relevant postal services market within the scope of the universal service as identified by the MCA.<sup>5</sup>

In order to ensure a smooth transition to a fully liberalised and competitive market environment, this decision designates MaltaPost as having SMP in the following postal services markets in Malta:

- Letter-post services market
- Bulk letter-post services market
- Registered letter-post services market
- Parcel-post services market

Given the position of SMP in the above-mentioned postal services markets, in accordance with regulation 64C of the Regulations, MaltaPost is required to abide by the following regulatory obligations:

- Cost orientation
- Non-discrimination
- Provision of services on a unbundled basis
- Approval and publication of tariffs
- Accounting separation

The above mentioned regulatory obligations are without prejudice to the power of the MCA to issue any directives to MaltaPost as it may be authorised to issue at law, including but not limited to any such directives issued in respect of article 76A of the Act.<sup>6</sup>

Any decisions issued by the MCA prior to the effective date of this decision shall continue to be in force until revoked or amended by the MCA.

An SMP designation is not permanent and would be removed if the MCA determines that MaltaPost no longer possesses SMP in one or more postal services markets following a market review procedure. The MCA intends to carry-out a market review of the above-mentioned postal services markets in the first half of 2013 in line with market review procedure described by the MCA.

The effective date of this Decision is the 1<sup>st</sup> of January 2013.

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<sup>5</sup> Refer also to the procedure for carrying out market reviews for the postal sector as depicted in the Response to Consultation and Next Steps (MCA/O/12-1397).

<sup>6</sup> Including directives issued to MaltaPost, as the designated USP, to ensure compliance with the tariff principles as stated under articles 21 and 22 of the Act and with regard to schemes pertaining to postal services.

## **1. Decision**

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In accordance with the Postal Services Act, Cap 254 of the Laws of Malta ('Act') and having had regard to Part IX of the Regulations the MCA hereby issues the following Decision.

### **1.1 Definitions**

The section defines the terms used for the purposes of this Decision. Unless the context otherwise requires the definitions in the Act and in the Regulations shall apply to this Decision.

"Bulk letter-post service" means a postal service which includes a substantial number of similar letter-post items deposited with MaltaPost at the same place and time, to be transported and distributed to the addressees indicated on each of the postal articles;

"Letter-post items" include postal articles categorised into three distinct formats: letter, large envelope and packet:

- 'letter' means a postal article of minimum dimension of 90 millimetre ('mm') × 140mm × 0.18mm, (with a tolerance of 2mm) and a maximum dimension of 235mm × 162 mm × 5mm, and with a maximum weight of 100 grams, and includes a postcard;
- 'large envelope' means a postal article other than a letter of minimum dimension 90mm × 140mm × 0.18mm (with a tolerance of 2mm) and maximum dimension of 300 mm × 400 mm × 25mm, and with a maximum weight of 500 grams;
- 'packet' means a postal article other than a letter or large envelope of minimum dimension of 70mm × 100mm × 25 mm and a maximum dimension of length, width and depth combined of 900mm, with a tolerance of 2mm, with the greatest dimension not exceeding 600 mm and with a tolerance of 2mm and a maximum weight of 2 kilograms except in the case of a packet for the transmission by post containing books or pamphlets with a maximum weight of 5 kilograms; when the packet is in the shape of a roll the length and twice the diameter not exceeding 1040mm and the greatest dimension not exceeding 900mm.

"Letter-post service" means a postal service that provides for transmission by post of letter-post items. A letter-post service may also include the registration and/or insurance of letter-post items;

"Parcel" means a postal article other than a letter, large envelope or packet as defined in the Act, and having a maximum length of 1.5 meters with the combined length and girth (twice the combined depth and width) not exceeding 3 meters and the weight not exceeding 20 kilograms;

“Parcel-post service” means a postal service that provides for the transmission by post of parcels tendered ‘over the counter’, either singly or in large quantities. A parcel-post service may also include the registration and/or insurance of parcels;

“Postal service” means any service for the transmission of postal articles (also referred to as ‘postal items’) from one place to another by post, and includes the incidental services involving the clearance, sorting, transport and distribution of such postal articles and any other services which relates to any of those services, and is provided in conjunction with any of them; and

“Registration” means a postal service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal article and, or of its delivery to the addressee.

## 1.2 Designation of SMP Postal Operator

In accordance with regulations 64A and 64B of the Regulations, with effect from the date of this Decision, MaltaPost is hereby designated by the MCA as having SMP in the following postal services markets within the scope of the universal service<sup>7</sup> in Malta:

- Letter-post services market
- Bulk-letter post services market
- Registered letter-post services market
- Parcel-post services market

## 1.3 Regulatory Obligations

Given the position of SMP held by MaltaPost in the above-mentioned postal services markets, MaltaPost is required to abide by the following regulatory obligations.

### 1.3.1 Obligation to Provide Services at Cost-Orientated Prices

In accordance with regulation 64E of the Regulations, MaltaPost is required to provide postal services in the above-mentioned markets to customers at cost-oriented prices, that is to say, that prices shall take account of, and reflect the costs of, providing the postal service or part of the postal service in that market.

### 1.3.2 Obligation of Non-Discrimination

In accordance with regulation 64F of the Regulations, MaltaPost is required to provide postal services in the above-mentioned markets to customers at prices, terms and conditions that are non-discriminatory. MaltaPost must not discriminate in favour of itself, or of its subsidiaries or partners, in the provision of such services.

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<sup>7</sup> Refer to **Decision 1 – Services within the Scope of the Universal Postal Service** of the MCA’s Decision Notice ‘Regulatory Direction on Specific Aspects of the Universal Postal Service’ published on the 25<sup>th</sup> March 2011:

<http://mca.org.mt/sites/default/files/attachments/decisions/2012/dn-postal-usomar.pdf>

The obligation to provide such postal services on a non-discriminatory basis requires that differences in the prices, terms and conditions for comparable postal services have to be based on objective differences, such as, but not limited to, variations in the cost of the service provided, variations in the quantity or quality of the service provided, or variations in the duration of the service agreement period.

### **1.3.3 Obligation of Provision of Services on an Unbundled Basis**

In accordance with regulation 64G of the Regulations, MaltaPost is required to provide postal services in the above mentioned markets on an unbundled basis.

This means that MaltaPost must not require that, as a condition for purchasing a particular postal service, a customer must also purchase any other postal service or non-postal service. However, MaltaPost may offer customers the option of purchasing a package that contains multiple postal services and non-postal services or products.

### **1.3.4 Approval and Publication of Tariffs**

In accordance with regulation 64H of the Regulations, and in accordance with any decision issued by the MCA,<sup>8</sup> MaltaPost is required to submit a tariff for the written approval of the MCA prior to offering or modifying the terms and conditions on which it offers any postal service that it provides in the above-mentioned markets, including postal services designed for specific customers. In addition, MaltaPost is required to obtain the written approval of the MCA prior to the withdrawal of a postal service that it provides in the above mentioned markets.

MaltaPost is required to disclose, by publishing on its website, the effective tariff not later than the date on which it begins to provide the postal service described in the tariff approved by the MCA. Where MaltaPost has obtained the MCA's approval to modify the tariff for an existing postal service, it must make the required publication no later than the date on which the modification becomes effective. The information must, as a minimum, include a service description, prices (including any discount structures), service quality and availability, and eligibility requirements.<sup>9</sup>

All existing tariffs of postal services filed by MaltaPost before the date of this Decision will remain in effect until such time as the MCA approves the modification or withdrawal of the tariff, or the MCA directs MaltaPost to modify or withdraw the tariff. The MCA may review these tariffs at any time to determine whether the prices, terms and conditions are cost-oriented and non-discriminatory.

Within 30 calendar days from the effective date of this Decision, MaltaPost must ensure that all existing tariffs that are in effect are appropriately published on its website in line

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<sup>8</sup> Refer to the MCA's Decision entitled 'Price Control Mechanism for MaltaPost Plc and Revised Postal Tariffs' published on the 8<sup>th</sup> of November 2012:

<http://www.mca.org.mt/service-providers/decisions/price-control-mechanism-maltapost-plc-and-revised-postal-tariffs>

<sup>9</sup> In accordance with regulation 64H(2) of the Regulations, the MCA may issue directives in respect of the manner in which approved tariffs, terms and conditions (including quality of service) are published.

with the information requirements mentioned above. The information must be published in a manner that is readily available, current and easy-to-understand.<sup>10</sup>

#### 1.3.5 Accounting Separation

In accordance with regulation 64I of the Regulations and without prejudice to article 23 of the Act,<sup>11</sup> a postal operator designated as having SMP in a postal services market is required to keep separate accounts within its accounting system in line with any directives that the MCA may issue.

In accordance with article 23 of the Act, MaltaPost, as the designated USP, is required to keep separate accounts within its accounting system for each of the postal services which are part of the universal service on the one hand and those which are not on the other. MaltaPost is required to continue to maintain the level of accounting separation as identified under the MCA's decision on Accounting Separation<sup>12</sup> until such time as any adjustments are required.

#### 1.4 Statutory Power not Affected

Nothing in this Decision shall limit the MCA in the exercise and performance of its statutory functions, powers and duties under legislation (in force prior to or after the effective date of this Decision) from time to time as the occasion may require.

The above mentioned regulatory obligations are without prejudice to the power of the MCA to issue any directives to MaltaPost as it may be authorised to issue at law, including but not limited to any such directives issued in respect of article 76A of the Act.

Any decisions issued by the MCA prior to the effective date of this decision shall continue to be in force until revoked or amended by the MCA.

#### 1.5 Monitoring Market Developments

An SMP designation is not permanent and would be removed if the MCA determines that MaltaPost no longer possesses SMP in one or more postal services markets. The MCA intends to review the above-mentioned postal services markets in the first half of 2013 in line with market review procedure described by the MCA.<sup>13</sup>

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<sup>10</sup> The effective tariffs are published in MaltaPost's Postal Services Schemes:

<http://maltapost.com/schemes>

The effective tariffs currently form part of the Appendix of MaltaPost's licence:

<http://www.mjha.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

<sup>11</sup> Article 23 of the Act refers to the accounting procedures required by a designated USP, such as, MaltaPost.

<sup>12</sup> Refer to MCA's Decision on the Accounting Separation and Publication of Financial Information by MaltaPost Plc published in January 2005:

<http://www.mca.org.mt/article/accounting-separation-and-publication-financial-information-maltapost-plc>

<sup>13</sup> Refer to **Appendix 01** of document MCA/0/12-1397 entitled 'Regulating the Postal Sector in a fully liberalised market – Response to Consultation and Next Steps' published on the 1<sup>st</sup> of November 2012:

<http://www.mca.org.mt/article/regulating-postal-sector-fully-liberalised-market-response-consultation-document-and-next>

## **1.6 Effective Date**

This Decision shall be effective from the 1<sup>st</sup> of January 2013 and shall remain in force until further notice by the MCA.