

MCA-LEG/js/15-2215 (LIT 108)

2nd April 2015

Mr. Charles Schiavone
Branch Manager
DHL International Ltd
MIA Cargo Village
Luqa LQA 3290

Dear Mr. Schiavone,

Re: Non-confidential version of the decision of the Authority adopting a forecasting estimation with regard to DHL Malta's revenue data analysis

Reference is made to the e-mail communication DHL International Ltd (hereafter 'DHL Malta') dated 6th March 2015 in response to the Authority's letter dated 17th February 2015 and also to other communications between the Authority MCA and DHL Malta, especially to the letter dated 5th January 2015 sent by your auditors PricewaterhouseCoopers ('PWC') to DHL Malta a signed copy of which was forwarded to the Authority by DHL Malta at our request and this Authority's letters dated respectively the 17th December 2013, 21st November 2014 and 26th November 2014.

Background

The issue in question commenced in 2013 when the Authority had repeatedly communicated with DHL Malta to obtain quarterly statistics for 2013. At one stage the Authority requested DHL Malta to furnish it with a detailed report from DHL Malta's auditors regarding the impact of, and their (the auditors') views on the change in revenue measurement as adopted in 2013 by DHL Malta.¹ Subsequently after yet another letter by the Authority dated 26 November 2014, DHL Malta provided the Authority with a letter from their auditors dated the 5th January 2015.

In response to the communication to the Authority of the letter by your auditors, the Authority in its letter of the 17th February 2015 addressed to DHL Malta, noted that the letter of 5th January 2015 by your auditors confirms that DHL Malta did not itself decide to change its revenue charging policy but rather was acting on instructions from Deutsche Post DHL.

[Detail omitted in this non-confidential version]

¹ See the Authority's letter dated 21st November 2014 addressed to DHL Malta.

The Authority noted that this indicated that instructions had been given by Deutsche Post DHL to DHL Malta leading to a situation whereby DHL Malta effectively declares a XXX revenue with regard to postal services “within scope of the universal service”. Considering that Deutsche Post DHL is in fact DHL Malta’s ultimate parent company, as disclosed in DHL Malta’s 2013 Financial Statements, the Authority observed that the decision by DHL Malta was not taken at arm’s length.²

The Authority further noted that this state of affairs effectively leads to distorted statistical information being provided by DHL Malta in the context of its market monitoring processes and that this could also impact the amount of the authorisation fee payable by DHL Malta under the First Schedule to the Postal Services (General) Regulations (SL 254.01 of the Laws of Malta). In the circumstances the Authority informed DHL Malta that in accordance with its powers at law [see paragraph (a) of the First Schedule to the Postal Services (General) Regulations] whereby if it considers that an operator does not within a reasonable timeframe given by the Authority, provide adequate and satisfactory information on the total gross revenue generated from the provision of postal services within the scope of the universal service, then the Authority may establish an alternative mechanism to determine the total fees due in line with the principles of proportionality and reasonableness. The Authority accordingly informed DHL Malta that it would be adopting a forecasting methodology to analyse an estimation of the gross revenues of DHL Malta with regard to the postal services provided by DHL Malta which fall within scope of the universal service.³

Decision on the adoption of a forecasting methodology by the Authority

The Authority considers that further to its letter of the 17th February 2015, DHL Malta did not give any valid reasons why the Authority should not proceed to adopt a forecasting methodology to analyse an estimation of the gross revenue of DHL Malta with regard to the provision of postal services with the scope of the universal service. If anything the response given by DHL Malta contradicts the information which until the 6th March 2015 had been provided to the Authority by DHL Malta, and does not, in any way, contest the conclusions reached by the Authority as communicated in its letter of the 17th February 2015 to DHL Malta.

The communication by DHL Malta that in 2013 it was paid [*& detail omitted in this non-confidential version*] is a new piece of information which should, if anything, have been provided earlier and raises issues in relation to which the Authority reserves the right to take further measures at the appropriate time, moreso as this new piece of information appears to contradict what was stated in your auditor’s letter dated the 5th January 2015. The Authority considers that this matter has been going on for several months and cannot be delayed any further.

² See the Authority’s letter dated 17th February 2015 addressed to DHL Malta.

³ Ibid.

The Authority in the circumstances is with immediate effect for the time being adopting the forecasting methodology to analyse an estimation of the gross revenue of DHL Malta with regard to postal services within the scope of the universal service for the purposes of its market monitoring processes, reserving the right to recalculate the annual authorisation fee due in this regard. The Authority reserves the faculty to revise this position if it considers that the circumstances so warrant in particular if new information is provided which the Authority may consider justifies a change in its position.

Without prejudice to the above the Authority, as stated above, reserves the right to take further appropriate regulatory action in relation to the veracity or otherwise of certain information as per the communications received from DHL Malta dated respectively 5th January 2015 and 6th March 2015 that has been provided to date.

Yours



Paul Edgar Micallef
Chief Legal Adviser

Cc: [1] Ms. Shirley Zammit Cacciottolo - Account & Reporting Supervisor DHL International Ltd.
[2] Ms. Romina Soler – Partner PricewaterhouseCoopers – 78 Mill Street, Qormi.