



## Broadband as a Universal Service

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**Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location**

### Response to Consultation, Proposed Decision and Next Steps

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## Executive Summary

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The availability of an adequate and reliable broadband internet access service is today a crucial enabler for participation in the digital economy and society. The coronavirus pandemic is a clear reminder on how dependent we are on the internet and, by implication, on the underlying high-speed broadband infrastructure. It is essential that citizens and businesses are able to access an adequate broadband internet access service, regardless of where they live or work.

In 2011, the Malta Communications Authority (MCA) established the minimum requirements to be complied with by the designated Universal Service Provider (USP), for access at a fixed location in relation to the provision of a connection capable of supporting functional internet access. The MCA established functional internet access, with a line speed of a minimum data rate of 4 Mbps, as a universal service. The minimum data rate of 4 Mbps no longer ensures the bandwidth necessary for social and economic participation in society.

In August 2020, as part of the review of a fixed connection capable of supporting functional internet access at a line speed of 4 Mbps, and taking into consideration the EU Directive 2018/1972, establishing the European Electronic Communications Code (EECC), the MCA published the consultation entitled “Broadband as a Universal Service - Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location ([MCA/C/20-3948](#))”. The consultation set out the MCA’s views on ensuring the availability of an adequate broadband internet access service, including the underlying connection at a fixed location, as a universal service.

Responses to the consultation were received from the three national electronic communications operators: GO Plc (hereinafter referred to as “GO”), Melita Plc (hereinafter referred to as “Melita”) and Vodafone Malta Limited (now “Epic Communications Limited”). The MCA would like to thank all respondents for their submissions, and the MCA believes that it has carefully considered, all views expressed.

In order to inform stakeholders on the outcome of the consultation, the MCA is publishing the response to consultation, the proposed decision (refer to **Appendix 1**) and next steps. The proposed decision will be updated once the required national legislation transposing the EECC is made under national legislation. Once updated the MCA will publish the final decision. The final decision will supersede the MCA’s 2011 Decision Notice entitled “Provision of access at a fixed location - Requirements to be complied with by the Universal Service Provider (USP) in relation to Functional Internet Access ([MCA/D/11-0314](#))”.

## 1. Introduction

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For many, across all ages, full participation in society is impossible without access to the internet. It is essential that people and businesses are able to access an adequate and reliable broadband internet access service, regardless of where they live or work.

The universal service acts as a 'safety net' to ensure that defined basic services are available to all end-users on request and at an affordable price to consumers, where a risk of social exclusion, arising from the lack of such access, prevents citizens from full social and economic participation in society.

Broadband as a universal service is a measure intended as a 'safety net' to deliver broadband to those residential and business premises across Malta that do not have access to an available adequate broadband internet access service, including the underlying connection, at a fixed location provided by the market under normal commercial conditions.

The 2009 EU regulatory framework<sup>1</sup> included functional internet access within the scope of the universal service.<sup>2</sup> In 2011, in line with the Electronic Communications Networks and Services (General) Regulations, S.L. 399.28, the MCA published its decision on the requirements to be complied with by the designated USP for access at a fixed location in relation to the provision of a connection capable of supporting functional internet access at a minimum data rate of 4 Mbps.<sup>3</sup> The designated USP is required to satisfy reasonable requests from end-users, subject to certain conditions, where market failure occurs - i.e. where no operator is willing to provide a fixed connection providing functional internet access, at a minimum data rate of 4 Mbps, to the premises of an end-user. In line with the 2011 Decision, the established minimum data rate for functional internet access will need to be revised to reflect advances in networks and equipment, prevailing bandwidth used by the majority of subscribers and changing social and economic conditions.

The EECC<sup>4</sup> includes the provision of an adequate broadband internet access service, including the underlying connection at a fixed location, within the scope of the universal service. An 'internet access service' is defined as a publicly available electronic communications service that provides access to

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<sup>1</sup> In 2002 the EU agreed to a comprehensive electronic communications regulatory framework which was subsequently revised in 2009. The EU regulatory framework was transposed under Maltese law in 2004 and substantially amended in 2011 to reflect the changes introduced by the EU in 2009.

<sup>2</sup> The [EU Directive 2002/22/EC](#) (on universal service and users' rights relating to electronic communications networks and services) amended by [Directive 2009/136/EC](#). Directive 2002/22/EC was limited to narrowband (56 kbit/s). The EU Directive 2009/136/EC amended Article 4 to allow data rates sufficient for access to online services such as those provided via the internet.

<sup>3</sup> Refer to MCA 2011 [Decision Notice](#) entitled 'Provision of access at a fixed location - Requirements to be complied with by the USP in relation to Functional Internet Access'.

<sup>4</sup> The revised EU electronic communications framework, reflected in the [EECC](#), came into force in December 2018. The EECC replaces the 2009 EU regulatory framework.

the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.<sup>5</sup>

In line with the EEC, each Member State is required to define what constitutes an adequate broadband internet access service for its jurisdiction, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers, with a view to ensuring the bandwidth necessary for social and economic participation in society. In addition, each Member State is required to ensure access to an adequate broadband internet access service at a fixed location, as a universal service.

In August 2020, a part of the review of the MCA's 2011 Decision on functional internet access and in view of the transposition of the EEC, the MCA published the consultation entitled "Broadband as a Universal Service - Ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location ([MCA/C/20-3948](#))". The consultation set out the MCA's views on the functional characteristics of an adequate broadband internet access service for Malta. It also outlined the approach that the MCA intends to use in ensuring that, following a reasonable request, end-users are able to access an adequate broadband internet access service at a fixed location, when such a service cannot be ensured by the market under normal commercial conditions.

As reflected in the consultation, this document does not deal with measures to ensure affordability for socially disadvantaged citizens (i.e. consumers with low-income or special social needs, including older people, end-users with disabilities and consumers living in rural or geographically isolated areas) who may be prevented from accessing an adequate broadband internet access service for reasons other than the lack of its physical availability. Any measures, as well as eligibility criteria, relating to prospective support provided to such consumers, and/or any requirement for undertakings to offer such consumers tariff options or packages different from those provided under national commercial conditions, will need to be determined together with Government and will be subject to a separate exercise.

In order to update all interested parties on the outcome of the consultation the MCA is publishing the response to consultation, the proposed decision (refer to **Appendix 1**) and next steps. The proposed decision will be updated and published as a final decision once the transposition of the EEC is made under national legislation.

## 1.1 Applicable Law

The universal service obligation (USO) as defined under the Electronic Communications (Regulations) Act, Cap. 399 of the Laws of Malta and the Electronic Communications Networks and Services (General) Regulations, S.L. 399.28 of the Laws of Malta establishes the minimum supply of electronic communication services that all end-users have the right to benefit from. A fundamental requirement of the USO is that all reasonable requests for connection to the public telephone network and access

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<sup>5</sup> An "internet access service" is defined in Article 2 of [Regulation \(EU\) 2015/2120](#) laying down measures concerning open internet access.

to publicly available telephone services at a fixed location are met by at least one operator. The connection shall be capable of data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies and bandwidth use by the majority of subscribers and technology feasibility.<sup>6</sup>

In January 2021, the Ministry for the Economy and Industry published a consultation document on the transposition of the EECC into national legislation.<sup>7</sup> As reflected in the proposed Regulations, which are planned to replace the current Electronic Communications Networks and Services (General) Regulations, S.L 399.28, it is envisaged that the MCA will be responsible to define the functional characteristics of an adequate broadband internet access service for Malta. The MCA will also be required to ensure that access to an adequate broadband internet access service, including the underlying connection at a fixed location, is safeguarded in light of national circumstances.

In accordance with regulation 71(3) of the proposed Regulations (transposing Article 84 of the EECC), it is envisaged that the MCA will be required, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers in Malta, also taking into account the BEREC report on best practice, to define the adequate broadband internet access service for Malta with a view to ensuring the bandwidth necessary for social and economic participation in society. The broadband internet access service must be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in the Fifth Schedule of the proposed Regulations, namely:

- E-mail
- Search engines enabling search and finding of all types of information
- Basic training and education online tools
- Online newspapers or news
- Buying or ordering goods or services online
- Job searching and job searching tools
- Professional networking
- Internet banking
- eGovernment service use
- Social media and instant messaging

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<sup>6</sup> Refer to current regulation 23 of S.L 399.28 (Provision of access at a fixed location and provision of telephone services).

<sup>7</sup> Refer to the public consultation entitled "[Draft Amendments to Electronic Communications Laws – Transposition of the EECC](#)".

- Calls and video calls (standard quality)

In accordance with regulation 73(1) of the proposed Regulations (transposing Article 86 of the EEC), where the MCA determines that the availability at a fixed location of an adequate broadband internet access service [as defined in accordance with regulation 71(3)] cannot be ensured under normal commercial circumstances, or through other potential public policy tools, the MCA will be empowered to impose an appropriate USO to accommodate all reasonable requests by end-users for accessing an adequate broadband internet access service in the relevant parts of Malta.

In accordance with regulation 73(2) of the proposed Regulations (transposing Article 86 of the EEC), the MCA will be required to determine the most efficient and appropriate approach for ensuring the availability of an adequate broadband internet access service in accordance with regulation 71(3), whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. The MCA will be required to seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

In accordance with regulation 73(3) of the proposed Regulations (transposing Article 86 of the EEC), the MCA will be empowered to impose obligations to ensure, for end-users, the availability of an adequate broadband internet access service at a fixed location. The MCA will be empowered to designate different undertakings or sets of undertakings to provide an adequate broadband internet access service at a fixed location or to cover different parts of Malta. When the MCA designates undertakings to provide the USO in part, or all, of Malta it will be required to use an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is *a priori* excluded from being designated.

## 1.2 Rest of the document

The rest of this document is structured as follows:

- **Section 2** sets out the minimum functional characteristics for an adequate broadband internet access service in Malta, as outlined in the consultation. The Section also provides a summary of the responses received to the consultation and the MCA's views and comments.
- **Section 3** sets out the proposed approach for ensuring that an adequate broadband internet access service, including the underlying connection, at a fixed location is available to an end-user following a reasonable request, as outlined in the consultation. The Section also provides a summary of the responses received to the consultation and the MCA's views and comments.
- **Section 4** sets out the way forward leading to the publication of the MCA's decision (the proposed Decision is reflected in **Appendix 1**) on the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location as a universal service.

## 2. Consultation Issue: Defining an Adequate Broadband Internet Access Service

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In the consultation the MCA proposed the definition of an adequate broadband internet access service for Malta, with a view to ensuring the bandwidth necessary for social and economic participation in society. The MCA proposed that an adequate broadband internet access service at a fixed location is one that can deliver a download speed of at least 30 Mbps; an upload speed of at least 1.5 Mbps; latency that is capable of allowing the end-user to make and receive voice and video calls effectively; and an unlimited data usage cap.

### 2.1 Defining an adequate broadband internet access service

The speed of internet access experienced by a given user depends on a number of factors, including the providers of internet connectivity as well as the given application for which a connection is being used. In line with the EECC, it is for the Member States, taking into account BEREC's report on best practices,<sup>8</sup> to define an adequate broadband internet access service at a fixed location as a universal service in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within a Member State's territory.

The BEREC report on best practice, entitled '*Member States best practices to support the defining of an adequate broadband internet access service*', identified a set of common principles in defining an adequate broadband internet access service based on national considerations. The report aims to contribute towards the consistent application of the EECC by Member States in the introduction of an adequate broadband internet access service as a universal service. The BEREC's report refers to the 2011 COCOM report (COCOM10-31 Final) entitled '*Implementation of the revised Universal Service Directive: Internet related aspects of Article 4*'.<sup>9</sup> The COCOM report provided clarification of the Universal Service Directive (Directive 2009/136/EC) in relation to internet related aspects. Although based on the 2009 EU regulatory framework, the COCOM report serves to inform the definition of an adequate broadband internet access service under the EECC. The COCOM report established that the assessment of a decent data rate for functional internet access can be based on whether the data rate is used at national level by:

- (i) at least 50% of all households; and
- (ii) at least 80% of all households with a broadband connection.

As outlined in the consultation, in defining an adequate broadband internet access service for Malta, the MCA has based its assessment, primarily, on the nationwide coverage of high-speed fixed

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<sup>8</sup> In line with the EECC [Article 84(3)] in June 2020 BEREC published a report on Member States' best practices to support the defining of adequate broadband internet access service. This first report will be updated regularly by BEREC to reflect technological advances and changes in consumer usage patterns.

<sup>9</sup> European Commission Information Society and Media Directorate General, Communications Committee Working Document "Implementation of the revised Universal Service Directive: internet related aspects of Article 4", COCOM10-31 Final, Brussels, 10 January 2011.

broadband internet access networks and the various technologies used across Malta, the prevailing bandwidth used by the majority of end-users, and the various fixed wired and wireless broadband technology packages available via the different operators.

*Bandwidth used by the majority of end-users*

At the time of publication of the MCA’s 2011 Decision Notice, functional internet access with a minimum data speed rate of 4 Mbps as a universal service was technologically and economically feasible. In 2011 approximately 75% of all households and businesses in Malta were subscribed to a fixed broadband internet access service, with over 97% of subscribers using broadband at data rates equal to or above a download speed of 4 Mbps (refer to **Table 1**). Fixed broadband networks (both DSL and Cable) offering broadband internet access services existed virtually throughout the country. In 2011 GO offered an entry-level broadband package over its telephone lines (DSL) with a speed of up to 4 Mbps. Similar broadband internet access services were also provided over Melita’s cable network.

Today, over 97% of all fixed broadband subscribers opt for a package of more than or equal to 30 Mbps (refer to **Table 1** above). Over 87% of all broadband subscribers opt for package of more than or equal to 50 Mbps. The entry level-fixed broadband packages offered on the market start with a download speed of greater than, or equal to, 30 Mbps and an upload speed of 1.5 Mbps<sup>10</sup>.

Table 1: Share of Fixed Broadband Subscriptions by download speed <sup>11</sup>						
	% End 2011	Subscriptions End 2011	% End 2019	Subscriptions End 2019	End 2020	Subscriptions End 2020
< 5Mbps	74.57%	95,956	0.16%	325	0.13%	287
>= 5Mbps but < 10Mbps	0.69%	883	0.04%	84	0.03%	74
>= 10Mbps but < 20Mbps	15.30%	19,693	3.95%	7,994	2.05%	4,376
>= 20Mbps but < 30Mbps	8.20%	10,548	0.53%	1,068	0.31%	667
>= 30Mbps but < 50Mbps	0%	2	11.80%	23,899	10.11%	21,567
>= 50Mbps but < 100Mbps	0.75%	964	38.00%	76,960	34.70%	74,053
> 100Mbps	0.49%	632	45.52%	92,183	52.66%	112,395
<b>Total</b>	<b>100%</b>	<b>128,678</b>	<b>100%</b>	<b>202,513</b>	<b>100%</b>	<b>213,419</b>

Source: MCA<sup>12</sup>

<sup>10</sup> Refer to GO’s broadband packages ([www.go.com.mt/internet](http://www.go.com.mt/internet)), Melita’s broadband packages ([www.melita.com/internet/fibre-powered-internet](http://www.melita.com/internet/fibre-powered-internet)) and Epic’s broadband packages ([www.epic.com.mt/fibre](http://www.epic.com.mt/fibre)).

<sup>11</sup> Includes fixed broadband subscriptions to the premises of all end-users (households and businesses).

<sup>12</sup> Refer to MCA’s report on the ‘[Key Market Indicators for Electronic Communications and Post](#)’.

*Fixed broadband technologies and coverage*

As outlined in the consultation, the different technologies provided by the main operators are capable of providing fixed broadband internet access services with a download speed of up to 1 Gbps throughout the national territory. **Table 2** below depicts the coverage of the different fixed broadband technologies available across Malta.

Table 2: Total coverage by fixed broadband technology (% of premises)							
	2016	Subscriptions (End 2016)	2017	2018	2019	2020	Subscriptions (End 2020)
DSL	100%	75,708	100%	100%	100%	100%	60,145
VDSL	72%		72%	72%	72%	72%	
FTTH	23%	9,504	32%	39%	40%	45%	36,138
Cable DOCSIS 3.0	100%	80,881	100%	100%	100%	-	103,091
Cable DOCSIS 3.1	-	-	-	-	100%	100%	
Fixed Wireless Access (FWA)	100%	5,170	100%	100%	100%	100%	14,045
<b>Total Subscriptions</b>	-	<b>171,263</b>	-	-	-	-	<b>213,419</b>

Source: MCA, Malta Telecoms Chapter of the Digital Economy and Society Index (DESI)<sup>13</sup>, Broadband Coverage in Europe 2019<sup>14</sup>

GO has a copper-based DSL broadband network infrastructure which provides connections supporting download speeds of up to 75 Mbps. GO also offers a combined fixed line and fixed wireless internet<sup>15</sup> (delivered over its 4G LTE mobile network) hybrid product which increases the download speed, in areas where the DSL speed attainability is of 50 Mbps or less, to a maximum of 75Mbps.<sup>16</sup> Over the years, GO has upgraded its street cabinets to fibre-to-the-cabinet (FTTC<sup>17</sup>) and is also rolling out its fibre-to-the-home (FTTH<sup>18</sup>) network, replacing its copper-based network.<sup>19</sup> At the end of 2020 GO's FTTH network coverage reached approximately 45% of all premises in Malta. Vodafone (now 'Epic') offers fixed broadband internet access services that are offered via regulated access to GO's FTTH

<sup>13</sup> Refer to [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=67243](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=67243).

<sup>14</sup> Refer to <https://ec.europa.eu/digital-single-market/en/news/broadband-coverage-europe-2019>.

<sup>15</sup> Fixed-wireless connections provide access to the internet via radio waves i.e. without a physical cable to the premises. Mobile networks when used for home broadband are a type of fixed-wireless connection.

<sup>16</sup> Refer to [https://cms.go.com.mt/wp-content/uploads/2019/11/Hybrid\\_Router\\_Res\\_Bus\\_0\\_TC-75mbps-11-11-19.pdf](https://cms.go.com.mt/wp-content/uploads/2019/11/Hybrid_Router_Res_Bus_0_TC-75mbps-11-11-19.pdf).

<sup>17</sup> FTTC is part-fibre, part copper technology: fibre optic cables run from the local exchange to a street cabinet, and existing copper lines connect the cabinet to the premises. The connection speed received decreases the further the premises is away from the cabinet.

<sup>18</sup> In the case of full-fibre (FTTH) fibre optic cables connect to the exchange directly to the premises. Full-fibre connection can deliver speeds greater than 1 gigabit per second (Gbps) and are much less affected by signal loss over distance.

<sup>19</sup> Refer to <https://cms.go.com.mt/wp-content/uploads/2021/05/GO-Annual-Report-2020.pdf>.

network infrastructure. Melita's fixed broadband network is based on the DOCSIS 3.1 standard. Melita has, over the past years, upgraded its broadband network with fibre up to street cabinets and created many additional optical nodes. Melita claims nationwide coverage with download speeds of up to 1 Gbps.<sup>20</sup> The operators using fixed line broadband technologies or hybrid technologies (a combination of fixed line internet and wireless broadband services delivered over 4G mobile networks) do not impose data usage caps, however traffic management policies apply.<sup>21</sup>

In terms of mobile technologies GO, Vodafone (now Epic) and Melita each have universal 4G LTE coverage. These operators have a coverage obligation, attached to the rights of use of radio spectrum for wireless broadband services, to make any technology they offer available on a nationwide basis.<sup>22</sup> Melita has also this year rolled out its 5G mobile network across Malta. In addition to nationwide mobile broadband and voice services, GO and Vodafone (now Epic) also provide fixed wireless broadband access services over their 4G mobile platforms. Vanilla Telecoms provides fixed wireless broadband access services via its wireless network infrastructure which uses the unlicensed radio spectrum band.

## 2.2 Functional characteristics of an adequate broadband internet access service

As discussed in the consultation, advances in technology, and people's response to these, mean that the way we use the internet has changed considerably over the past years. Internet usage today relies largely on downloading content from the internet, for example web-browsing, email, video streaming, video calling and conferencing. In addition to an adequate broadband download speed,<sup>23</sup> common applications used today, such as video conferencing and sharing large images and video files, also require an appropriate upload speed.<sup>24</sup>

As consumers take up faster broadband more data is being consumed (for example downloading of streamed music, films, computer software, video games and e-books) thus requiring adequate data usage allowances. With increased internet usage, the service characteristics for broadband such as upload speeds, unlimited data usage and factors such as latency<sup>25</sup> (which can affect the performance of live applications, such as video calling and conferencing) have become more important. In addition, households are increasingly using multiple internet devices at the same time. These trends show that

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<sup>20</sup> Refer to <https://www.melita.com/internet/gigapower/> and <https://www.melita.com/1000-mbps-internet-available-nationwide-from-melita/>.

<sup>21</sup> In line with Regulation (EU) 2015/2120 providers of internet access services may implement reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic.

<sup>22</sup> Refer to MCA 2017 Decision ([MCA/D/17-2971](#)) and MCA 2021 Decision ([MCA/D/21/4177](#)) on the assignment process for additional spectrum for wireless broadband.

<sup>23</sup> Download speed is the rate of transmission from a network operator's access node to an end-user.

<sup>24</sup> Upload speed is the rate of transmission from an end-user's connection to a network operator's access node.

<sup>25</sup> Latency is the delay for the connection, it is particularly important for live applications such as live video streaming and video calls. The figure is most commonly measured in milliseconds, and a connection with low latency will feel more responsive for simple tasks like web-browsing.

both the download and upload speed required by the average household to access more data heavy services or more devices, is increasing.

Taking into account Malta's nationwide fixed broadband access network coverage by more than one technology, the prevailing bandwidth used by the majority of broadband end-users and the entry level fixed broadband packages available on the market, it is proportionate and justified to consider that an adequate broadband internet access service, including the underlying connection at a fixed location, should consist of the following minimum functional characteristics:

- a download sync speed of at least 30 Mbps (i.e. modem sync speed is the maximum speed available between an end-user's premises and their internet service provider's network);
- an upload sync speed of at least 1.5 Mbps;
- latency that is capable of allowing the end-user to make and receive voice and video calls effectively; and
- an unlimited data usage cap.

As discussed in the consultation, these functional characteristics allow for an adequate broadband internet access service at a fixed location that enables full and effective participation in the digital society and supports at least the minimum set of services set out in Annex V of the EECC (reflected in Fifth Schedule of the proposed Regulations<sup>26</sup>). Any technology that can deliver the above functional characteristics counts as an adequate broadband internet access service at a fixed location.

The functional characteristics for an adequate broadband internet access service at a fixed location are deemed sufficient to meet the digital needs of a typical household and the needs of small-sized enterprises. The 'floor' set for the minimum functional characteristics of an adequate broadband internet access service as a universal service for Malta is the ideal one under present circumstances. It is recognised that over time the functional characteristics will need to be increased as more users take up higher speeds and the needs of end-users change.

A minimum download speed of 30 Mbps also reflects the EU's Digital Agenda broadband 2020 target of 100% of Europeans having access to at least 30 Mbps download speed. The European Commission also sets a goal of providing speeds of at least 100 Mbps to all European citizens, upgradable to 1 Gbps, by 2025 (Commission communications on a Gigabit Society and 5G Action Plan on 1 June 2017<sup>27</sup>).

Broadband availability as a universal service (refer to **Section 3**) provides an eligible end-user with a right to request and subscribe to a broadband internet access service at a fixed location that meets, as a minimum, the defined functional characteristics of an adequate broadband internet access

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<sup>26</sup> Refer to the [public consultation](#) on the transposition of the EECC -Draft amendments to the Electronic Communication Laws published on the 11<sup>th</sup> January 2021.

<sup>27</sup> Refer to [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0234\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0234_EN.html).

service in those cases when an existing operator is unlikely to be in a position to provide such a service to his/her premises.

The universal service requirement that sets the minimum functional characteristics for an adequate broadband internet access service is seen as a 'floor' that in no way hampers the provision by a broadband operator of higher - or even lower - functional characteristics of a fixed wired or wireless broadband internet access service. What is essential is that, within reasonable bounds, all people and businesses in Malta can have the ability to access the internet via what is considered as an adequate broadband internet access service.

### 2.3 Summary of respondents' views and MCA's comments

#### ***(1) Summary of Respondents' views - Defining an adequate broadband internet access service***

In its contribution to the consultation, GO argued that the MCA may have over-extended itself by assuming what the eventual national legislation (i.e. the transposition of the EECC into national legislation), will actually state and impose, whether in the context of the responsibilities which the MCA will (continue to) have as the National Regulatory Authority (NRA) or the minimum set of services that an adequate broadband internet access service shall consist of.

GO argued that although the entry level fixed broadband packages currently available on the market start at 30 Mbps there are a number of subscribers still on a package which falls below such a broadband speed. GO noted that in many cases the speed of these connections can be increased through the use of its hybrid 4G modems. However, GO stated that there are still areas in Malta where it is currently not in position to deliver a bandwidth of 30 Mbps to end-users.

GO stated that that it still has street cabinets that are not fibre backhauled. In addition, on the basis of the past roll-out pace, GO noted that another eight years would be required to cover the whole nation with its FTTH network. GO disagreed with the MCA's view that the different technologies provided by the main providers are capable of providing fixed broadband services with a minimum download speed of 30 Mbps up to 1 Gbps throughout the national territory. GO expressed its concern with the way the MCA wishes to implement broadband as a universal service, with such high data speeds being proposed. GO argued that it is investing to deploy an entirely fibre connected network, however it cannot be expected to support measures that will disrupt such extensive investment and distort the market.

GO argued that it is "all the more concerned when the MCA wishes to forge ahead in the manner being proposed in this consultation and at this rate, with such high speeds being proposed, when the groundwork necessary to enable and build high-speed fixed broadband networks is light-years away from what the EU and government intended". GO also made reference to the EU Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks (BCRD). GO argued that although the BCRD was transposed via amendments to the Utilities and Services (Regulation of Certain Works) Act, Cap. 81 of the Laws of Malta and by the introduction

of In-building Physical Infrastructure (Access to Electronic Communications Services) Regulations, S.L. 513.05, both in 2016, in practice, neither of these laws has done anything to facilitate the deployment of such high-speed networks and reach their intended purpose and that of the BCRD. GO argued that, unlike electricity, water and drainage, access to a broadband network or service is seemingly perceived as being an afterthought and the responsibility of the respective occupier rather than a service which requires and merits its own planning and internal network in order to connect to the external network. GO argued that all this is relevant to the consultation, as this has a major impact on the ability for network operators to reach their customers with such proposed speeds as a universal service. GO acknowledged that these issues fall outside MCA's direct remit, but which nonetheless affect the efficient deployment of high-speed broadband services across Malta.

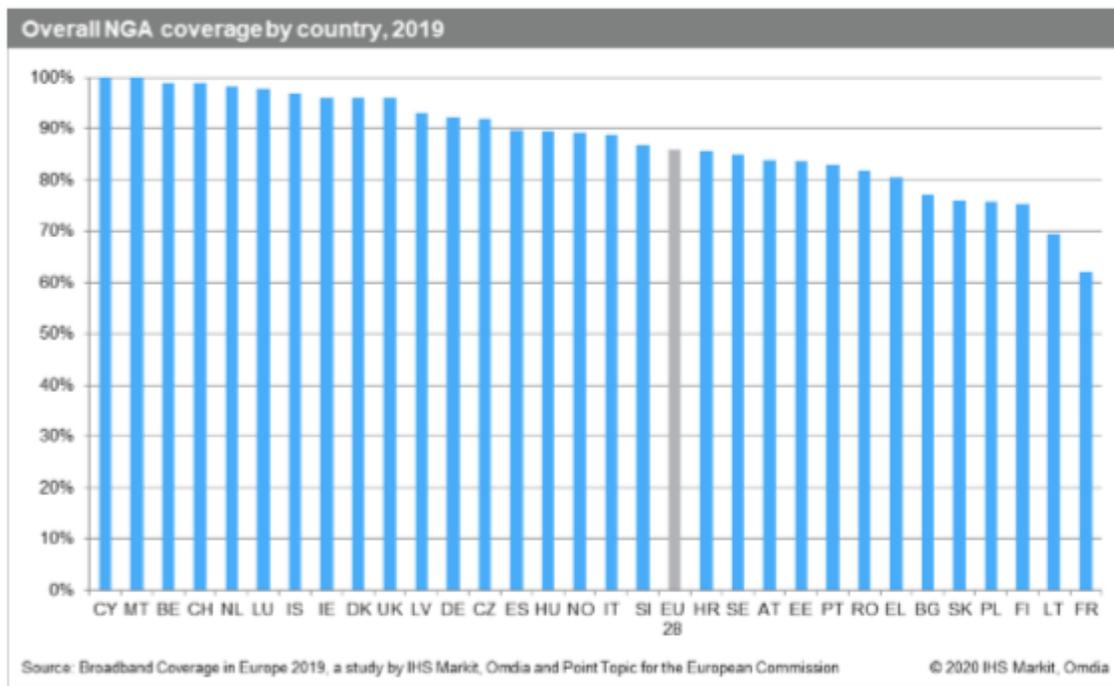
GO argued that operators cannot be expected to provide broadband services everywhere, irrespective of the cost to deliver the service, especially in those cases where premises are built outside the building development zone. GO stated that although it recognises that a designated operator required to provide the USO may claim an unfair burden, and that any unfair burden can be included in the net cost calculation of the USO, these costs are not entirely recovered given that intangible benefits resulting from the provision of the USO are deducted from a claim for funding. GO believes that the situation would become all the more unfair should the cost of USO funding become a cost shared between all local operators where larger operators, like GO, would incur a substantial part of that cost making it unfeasible to sustain. GO argued that, aside from the cost element, nationwide broadband coverage that guarantees such a high minimum broadband speed will not always be possible. GO noted that in rural and remote areas in other EU Member States, satellite networks and not wired or mobile terrestrial networks are used to meet the minimum requirements of Annex V of the EECC. GO argued that USO conditions should also be dependent on the over-arching caveat that there is the real possibility to provide such high-speed broadband connections.

### ***(1) MCA's Comments - Defining and Adequate Broadband Internet Access Service***

**Competent authority responsible for safeguarding the provision of the universal service** - The MCA is the competent authority responsible for safeguarding the provision of the universal service. In line with legislation, in 2011, the MCA published its decision on the requirements to be complied with by a designated USP in relation to a connection at a fixed location capable of providing functional internet access. Access to a fixed connection capable of supporting functional internet access (set at a download speed of 4 Mbps) has been part of the universal service since 2011. Since the publication of its 2011 Decision, some 10 years ago, there have been significant technological and other developments in the electronic communications sector. The MCA's consultation reviewed the minimum data rate for functional Internet access to reflect advances in networks and equipment, prevailing bandwidth used by the majority of subscribers and changing social and economic conditions. In order to update its 2011 Decision the MCA has taken into consideration current legislation and the relevant provisions of the EECC, which provisions are to be reflected under national legislation in line with Malta's obligation under EU law to transpose the same.

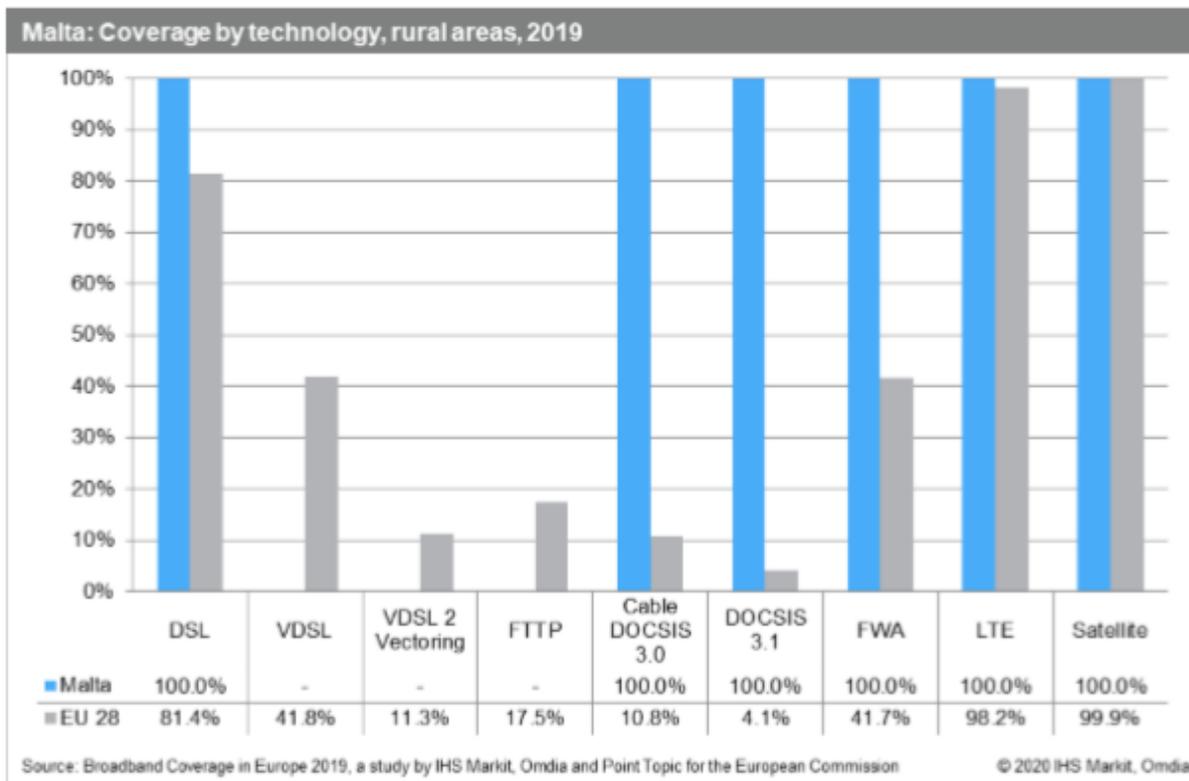
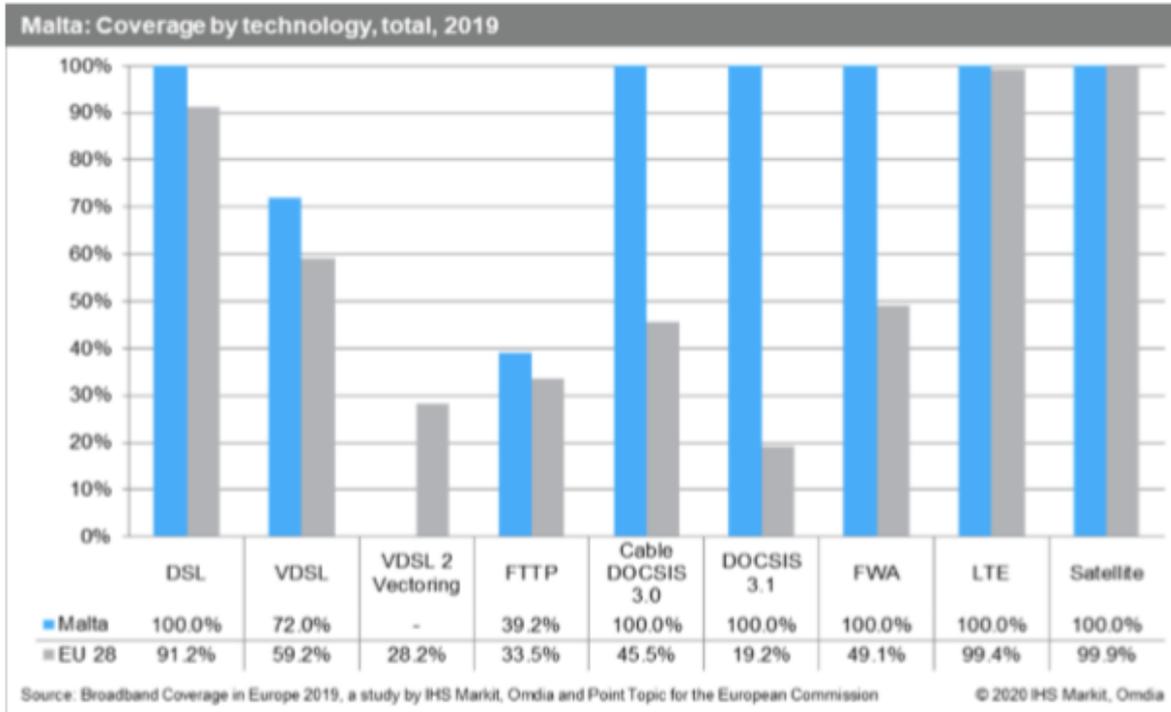
**Coverage of high-speed broadband networks** - Malta benefits from national coverage in the provision of high-speed broadband internet access services (fixed-line, wireless broadband networks). With one or two high-speed broadband networks passing by an end-user’s premises, an end-user should have no problem in subscribing to an available adequate broadband internet access service having a minimum download speed of 30 Mbps. In general, all premises in Malta are passed by a high-speed broadband network as a result of the operators’ investments in commercial roll-out of various broadband access technologies across Malta. In the case of broadband wireless networks, as part of their licence obligations for the rights of use of radio spectrum, operators have a coverage obligation to make any technology they offer available on a nationwide basis.<sup>28</sup>

As outlined in the European Commission’s 2019 report on broadband coverage,<sup>29</sup> Malta benefits from universal fixed broadband and NGA coverage. The report notes that by mid-2019, Malta was the only country in the study to have recorded universal Very High Capacity Networks (VHVN) coverage.



<sup>28</sup> Refer to Section 5 (Network rollout and coverage obligations) of the MCA 2017 Decision “Assignment Process for Additional Spectrum and Wireless Broadband – 800 MHz, 1800 MHz and 2.6 GHz bands (MCA/D/17-2971)” whereby licensees are required to use all the spectrum assigned to them within a twenty four (24) month timeframe from the date of assignment. In addition, whenever a new technology is launched throughout the term of the licence, the licensee will be bound to offer this technology nationwide within a 24-month timeframe from the said launch. Also refer to Section 4.3 (Roll-out and coverage obligations) of the MCA 2021 Decision “Assignment process for additional spectrum for wireless broadband electronic communications services - 700 MHz, 3.6 GHz and 26 GHz bands (MCA/D/21-4177)”. Licensees are required to make any technology and services they offer available on a nationwide basis on an uninterrupted coverage basis. Licensees have up to twenty-four (24) months from the date of assignment to come in line with this obligation, and subsequently to maintain it for the whole duration of the licence. Such an obligation can be met collectively with any other licenced spectrum bands.

<sup>29</sup> Refer to: <https://ec.europa.eu/digital-single-market/en/news/broadband-coverage-europe-2019>.



**Uptake of high-speed broadband internet access services** - The MCA notes that the small number of end-users currently on a broadband subscription of less than 30 Mbps, does not reflect the lack of availability of high-speed broadband networks and services across Malta. It however reflects the choice of some end-users to remain on a subscription of less than 30 Mbps. In fact, the number of subscribers on a package having speeds of less than 30 Mbps continues to fall year on year, as the market caters for improved broadband internet access service characteristics. The data shows that at the end of 2016 38% of fixed broadband subscribers had a subscription of less than 30 Mbps whilst at the end of 2020 only 2.5% of all fixed broadband subscribers were on a package of less than 30 Mbps. In addition, between 2016 and 2020, the market catered for over 42,000 new fixed broadband subscriptions (around 85,000 new subscriptions since 2011). The trend for end-users to move to faster broadband speeds, available via the different broadband technologies across Malta, will continue in the coming years, independently of the USO policy.

Taking into consideration national coverage of the various high-speed broadband networks and the current uptake of broadband internet access services by end-users, the capacity for an adequate broadband internet access service as a universal service for Malta should not be set lower than the capacity used by the majority of end-users. This is well in line with the above-mentioned COCOM report which establishes that the assessment of a decent data rate for functional internet access as a universal service can be based on whether the data rate is used at national level by: at least 50% of all households; and at least 80% of all households with a broadband connection.

**Market developments** - The electronic communications market has been a leader in the development of high-speed broadband networks and services across Malta. The commercial developments in the deployment of high-speed broadband technologies over the past years has progressed significantly. In addition, the coverage obligations imposed on wireless broadband operators benefiting from rights of use of radio spectrum have further facilitated the deployment of high-speed broadband services on a nationwide basis.

In general, all households and business premises in Malta have the opportunity to subscribe to an adequate broadband internet access service at a fixed location (regardless of whether the premises are already connected or not connected to a broadband network) available on the market. In addition, end-users seeking a broadband internet access service at a fixed location often have a choice on the type of technology, broadband characteristics, and operator.

Establishing a minimum download broadband speed of 30 Mbps, as an adequate broadband internet access service at a fixed location, would in no way have a disruptive effect on the electronic communications market in Malta. Neither would it have an effect on the market's incentives to commercial development and the market's incentives to continue to expand the coverage and quality of the various wired and wireless broadband networks across Malta. It is rather surprising that operators aiming at nationwide gigabit connectivity, whether by fixed wired or wireless means, should have concerns over the provision of what nowadays are rather modest speeds and quality characteristics of an adequate broadband internet access service, which represent the bottom end of their offers on the market.

As has happened over the past years the technical characteristics of the various broadband technologies available on the market will continue to improve. In 2019, Melita completed the upgrade of its nationwide cable network (DOCSIS 3.1), allowing it to offer download rates of up to 1Gbps across Malta.<sup>30</sup> GO is continuing with the deployment of its nationwide fully optical FTTH network,<sup>31</sup> replacing its copper network. 5G deployment in Malta has also started this year.<sup>32</sup> 5G is expected to provide increased capacity and quality of wireless broadband internet access networks and services. 5G also presents an opportunity to offer improved hybrid and fixed wireless access technologies.

**Eligibility for an adequate broadband internet access service:** As set out in the consultation, in order to minimise the imposition of costs on industry, and unreasonable requests from end-users, an end-user would be eligible for an adequate broadband internet access service under a USO if his/her premises is a permanent place of residence (home), a business premises or a premises used by a non-profit organisation. Only those premises which are legal residential premises or registered business premises (including not-for-profit-organisations) will be considered eligible for an adequate broadband internet access service under a USO. The MCA would recognise any place having a year-round business activity and a place of residence suitable for year-round living as being eligible for an adequate broadband internet access service under a USO. An end-user will be eligible for the USO only when no operator on the market is able to provide such a service, which meets or exceeds the defined minimum functional characteristics of an adequate broadband internet access service, to the permanent place of residence or business premises of an end-user in a given area.

**Ensuring access to an adequate broadband internet access service:** Given nationwide high-speed fixed broadband coverage and the various broadband technologies available across Malta, the need to directly designate an operator to meet a reasonable request of an end-user for an adequate broadband internet access service, would only be necessary in very rare and exceptional cases, if any. The market should be in a position to meet all reasonable requests, from end-users, for an adequate broadband internet access service which meets or exceeds the defined minimum functional characteristics.

In those very few and exceptional cases, if any, in situations when the MCA would need to directly designate an operator to provide the USO, the MCA is confident that the USO would not result in an unfair burden. However, if a designated operator requests compensation, and the USO represents an unfair burden on a designated operator, the law allows the MCA to introduce a mechanism for financing the net cost of the USO where it is demonstrated that the obligation can only be provided at a loss or at a net cost which falls outside normal commercial standards (taking due account of cost and revenues as well as the intangible benefits resulting from the provision of the service concerned).

It is the MCA that decides whether the net cost is considered as an unreasonable burden. The framework applicable towards funding the universal service operates on the principle that the universal service should be cost-neutral for a designated operator, i.e. a designated operator should

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<sup>30</sup> Refer to <https://www.melita.com/1000-mbps-internet-available-nationwide-from-melita/>.

<sup>31</sup> Refer to <https://cms.go.com.mt/wp-content/uploads/2021/05/GO-Annual-Report-2020.pdf>.

<sup>32</sup> Refer to <https://www.melita.com/mobile/discover-5g/>.

not have a cost advantage or disadvantage from delivering the USO. An operator may be compensated for the determined net costs from public funds (with the approval of the Minister responsible for Communications and of the Minister for Finance) and/or share the net cost of the USO between providers of electronic communications networks and services. Reference is also being made to Section 6 (Costing and Financing of Universal Service Obligations) of the MCA's 2021 Decision ([MCA/D/21-4167](#)) on the Review of Universal Service Obligations on Electronic Communications Services. The MCA notes that adequate broadband internet access brings benefits not only to the electronic communications sector but also to the wider online economy and to society as a whole. Ensuring such a service on the basis of a USO serves both the public interest and the interests of electronic communications operators.

***(2) Summary of Respondents' views - Functional characteristics of an adequate broadband internet access service***

In its contribution to the consultation GO made reference to the EU Commission's "Review of the scope of universal service," whereby it was estimated that the bandwidth required in 2020 to provide similar services as those listed in Annex V of the EEC is 9.6Mbps. GO also made reference to the 'BEREC report on Member States best practices to support the defining of adequate broadband internet access service', where currently only nine Member States, including Malta, introduced a broadband USO, with the minimum download speeds ranging from between 1Mbps and 10Mbps.

GO argued that the BEREC report shows that the majority of these countries which have introduced broadband USO have used multiple evaluation criteria. GO argued that Malta, on the other hand, has in contrast based its decision solely on the prevailing bandwidth used by the majority of broadband end-users, and the entry level fixed broadband packages available on the market. GO questioned why the MCA chose to ignore the other evaluation criteria, and yet proposed to increase the download rate to one which is three times the highest broadband speed currently mandated within the EU. GO argued that the MCA failed to properly analyse the significant impact that such a decision will have on local operators. GO argued that the MCA has tried to picture a situation where a 30Mbps download speed and 1.5Mbps upload speed can be easily provided to all premises in Malta, with a minimal effort.

GO argued that should the MCA designate it to provide an adequate broadband internet access service, in areas where it would need to enter into civil engineering and other infrastructural works to provide such a connection, it would have to re-direct its technicians and divert other planning, administrative and other resources allocated to planned, profitable, efficient and effective FTTH deployment in order to make the necessary works to supply a single adequate broadband connection to an end-user. GO argued that such a decision would seriously impact its costs and disrupt its planned fibre network deployment. GO argued that given the high speeds being proposed as part of the USO, requests under a USO are bound to become more frequent, thus placing an increased burden on GO. GO argued that it cannot be expected to support measures that will disrupt such extensive investment and distort the market.

GO argued that the EU's Digital Agenda broadband target, should not be used in the context of an adequate broadband connection, when these targets are intended for the provision of fast and ultrafast broadband networks, and not to provide affordable internet access to a minimum set of services. GO noted that the EU Commission defines connections with a download speed of 30Mbps as fast broadband connection and not as an adequate broadband connection. GO noted that the MCA should take due consideration to GO's shareholders current FTTH investment decisions and should not use the USO policy to interfere with the market development for fast and ultrafast broadband.

Vodafone (now Epic) in principle agreed with the MCA's proposed minimum functional characteristics of an adequate broadband internet access service for Malta, as well as the proposed procedure to be used by the MCA in safeguarding its availability as a universal service. Melita did not specifically comment on proposed functional characteristics of an adequate broadband internet access service.

## ***(2) MCA's Comments - Functional characteristics of an adequate broadband internet access service***

It is clear from the EEC that the characteristics of an adequate broadband internet access service, as a universal service, should reflect national considerations and the minimum bandwidth used by the majority of consumers in the respective Member State. Purposely, the EEC does not contain concrete numbers in terms of speed and uptake. The EEC leaves it up to the national conditions of respective Member States to define what is considered as an adequate broadband internet access service for their territory. The EEC explicitly provides flexibility to the Member States in defining the scope of the universal services by adapting the scope to national circumstances and user behaviour.

In defining the functional characteristics of an adequate broadband internet access service for Malta, the MCA has taken into account the fact that, unlike most EU Member States, national conditions reflect that Malta has nationwide coverage of high-speed fixed-line, fixed wireless and mobile broadband services. A 30 Mbps download speed (and an upload speed of 1.5 Mbps) is today considered a minimum decent broadband internet speed required to meet the reasonable needs of an average family and micro business.

The entry level broadband packages available nationwide on the market start with a minimum download speed of 30 Mbps. Setting the bar for the universal service at a minimum download speed of 30 Mbps (together with the other quality characteristics of an adequate broadband internet access service) will provide a better user experience, which in particular will be noticeable when more than one person in a household or business uses the internet at the same time. This has been evident during the coronavirus pandemic when a large share of the workforce shifted to working remotely, e-commerce and use of delivery apps increased significantly, and students continued their studies through online education. The MCA believes that much of this change, and many of these new services, experiences and digital skills will stay in place even after the pandemic.

Nationwide fixed broadband access network coverage by more than one technology, the prevailing bandwidth used by the majority of end-users and the entry level fixed broadband packages available on the market, makes its reasonable, proportionate and justified for an adequate broadband internet

access service as a universal service to be defined as having the following minimum functional characteristics: a download speed of at least 30 Mbps; an upload speed of at least 1.5 Mbps; latency that is capable of allowing the end-user to make and receive voice and video calls effectively; and an unlimited data usage cap.

### 3. Consultation Issue: Availability of an Adequate Broadband Internet Access Service

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As outlined in the consultation, the MCA, on an ongoing basis, monitors the deployment, coverage and quality of high-speed fixed broadband (wired and wireless) networks across Malta. The MCA also monitors complaints relating to any lack of access to a broadband internet access service at a fixed location.

With the availability of fast and superfast fixed broadband technologies across Malta by more than one operator, all premises (residential and business) should be in a position to receive an adequate broadband internet access service with at least the defined minimum functional characteristics (see **Section 2**). In fact, over the past years, complaints resulting from lack of access to an available decent broadband internet access service at a fixed location have been very few, and the market was in position to cater for such requests.

In general, the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location can be ensured by market forces. However, it is recognised that there may be rare and exceptional cases when the market may not be in a position to provide an end-user with an adequate broadband internet service. Taking into consideration the coverage of high-speed broadband technologies across Malta there would only be very few cases when an end-user would not be able to subscribe to an adequate broadband internet access service at a fixed location, under normal commercial conditions, due to availability issues.

As a safety-net, in order to cater for those rare and exceptional cases when the market is unlikely to provide end-users in certain areas with a connection capable of delivering an adequate broadband internet access service at a fixed location, the MCA may need to designate an operator to deliver the USO to eligible end-users, following a reasonable request. The USO will provide an eligible end-user with a right to request and subscribe to a broadband internet access service that meets, as a minimum, the defined functional characteristics of an adequate broadband internet access service (see **Section 2**) in those cases when no existing operator is in a position to provide such a service to the premises of the end-user.

#### 3.1 Delivering the Universal Service Obligation

In the consultation the MCA outlined the criteria for an end-user to be eligible for an adequate broadband internet access service under a USO. To ensure that requests are reasonable, an end-user would be considered eligible for an adequate broadband internet access service at a fixed location under a USO if all of the following conditions are met:

- the connection is to a fixed location consisting of a place of residence, of a business premises, or of a premises used by a not-for-profit organisation;
- the end-user requests that a broadband internet access service is provided to that location; and

- a broadband internet access service on an existing network that meets or exceeds the defined minimum functional characteristics is not available to that location.

As set out in the consultation, only premises which are permanent legal residential (home), or business (including not-for-profit organisations) premises will be considered eligible for an adequate broadband internet access service, under a USO. The MCA will, amongst others, use the postcode postal address database, local business databases and when necessary information from the end-users; in order to establish whether the address of that location meets the definition of being a fixed location, and whether an end-user is eligible for a broadband internet access service under a USO.

As reflected in the consultation, in delivering the USO, the MCA would expect an operator to supply the broadband internet access service, including the underlying connection, to the end-user's premises as quickly as possible and within a maximum period of 30 days after the eligible end-user has placed his/her order for an adequate broadband internet access service, unless there are exceptional circumstances that make it more difficult.

There will be no constraints on the technical means by which an adequate fixed broadband internet access service at a fixed location is provided by an operator, allowing for wired or wireless technologies (such as services provided over mobile networks when used to access broadband at a fixed location), nor any constraints on which undertakings provide the USO.

In order to provide the USO, an operator may use the technology or technologies it deems most appropriate. In practice the use of wired based broadband technologies is likely to be an efficient technology choice for delivering an adequate broadband internet access service to the premises of an end-user. There may however be circumstances where wireless broadband technologies may be more appropriate, as long as they are capable of delivering the established minimum functional characteristics established for an adequate broadband internet access service at a fixed location.

In delivering the USO, an operator would be required to provide the broadband internet access service, including the underlying connection, to the premises of an end-user at the same price and quality of service levels (i.e. concerning faults, compensation schemes, etc.) as equivalent services offered to its non-USO customers. An end-user would be required to subscribe to, and pay, for a broadband internet access service package. An end-user should not be required to pay more than for equivalent broadband internet access services provided in other parts of Malta. Once an end-user enters into a contract with the designated operator for the provision of an adequate broadband internet access service, their relationship will be one of a normal customer's relationship with the retail provider.

### 3.2 Designating an operator to deliver the Universal Service Obligation

As set out in the consultation the MCA has proposed an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no operator is *a priori* excluded from being designated to deliver the USO. The designation mechanism will ensure that an adequate broadband

internet access service, including the underlying connection, at a fixed location is provided to an eligible end-user following a reasonable request.

In those exceptional cases when an end-user notifies the MCA of his/her inability to secure an adequate broadband internet access service at a fixed location with one of the existing operators, the MCA will first confirm whether the end-user is eligible for the service under a USO. When an end-user is eligible for an adequate broadband internet access service under a USO the MCA will issue a request for interest to assess whether an operator is willing to provide the end-user with an adequate broadband internet access service, that meets or exceeds the defined minimum functional characteristics, under normal commercial conditions. In expressing interest an operator would provide information on the type of fixed broadband technology, or mix of technologies, and on the main steps and timeframes to provide an adequate broadband internet access service to the premises of an eligible end-user.

In the consultation the MCA noted that, even though requests for an adequate broadband internet access service under a USO would be rare and exceptional, it would still need to consider the possibility that no operator would declare itself willing to provide an eligible end-user with an adequate broadband internet access service.

In default of an expression of interest, a practical and effective solution would be to directly designate an existing operator having the closest available fixed broadband network to the end-user's premises to deliver the USO. The MCA would base its decision on information available from the operators having fixed broadband networks deployed in the relevant area. In the future, geographical mapping of network deployments will provide the MCA with additional information on the reach of fixed broadband networks and the available technology and services (including upload and download speeds) available in a particular area.<sup>33</sup>

### 3.3 Performance monitoring and reporting

As set out in the consultation a designated operator would be required to report on the delivery of an adequate broadband internet access service under a USO. A designated operator will be required to report annually to the MCA on the:

- type of technology used to provide the broadband internet access service to an end-user;
- functional characteristics of the broadband internet access service provided to an end-user;
- the supply time for the initial connection to an end-user's premises; and

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<sup>33</sup> In accordance with regulation 17 of the proposed Regulations (transposing Article 22 of the EEC), the MCA will be responsible to conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband ("broadband networks").

- type of premises (residential, business, or not-for-profit organisation) connected and their location.

### 3.4 Summary of respondents' views and MCA's comments

#### **(3) Respondents' views - The availability of an adequate broadband internet access service:**

**3a. Delivering the Universal Service Obligation** - GO argued that in most of the EU Member States a broadband USO applies to residential premises only. GO agreed with the consultation proposal that residential premises should only include permanent legal residential premises (homes). On the other hand, given the proposed minimum broadband speed, GO argued that legal persons should be excluded from being eligible for the USO as they would have the means to pay for tailor-made business solutions. GO argued that the MCA did not take into consideration those customers on a contract which currently are enjoying speeds that do not necessarily reach the proposed USO functional characteristics. GO noted that the MCA needs to consider the rights which such customers would have, as against the expense and difficulties for operators, if such customers were to request the USO standard midway through their contract.

Vodafone (now Epic) agreed with the MCA that an operator designated to deliver the USO shall supply the broadband internet access service to the end-user's premises as quickly as possible. Vodafone argued that the maximum period of 30 days can be insufficient and, in some instances, technically impossible. Vodafone argued that the delivery of broadband internet access services to locations not having a connection may bring along technical and economic constraints (e.g. in the deployment of infrastructure). In view of this, Vodafone argued that that the timeline for such a delivery should be in general extended and agreed on case by case basis.

Melita noted that, as highlighted in the consultation, there may be exceptional cases when the market may not be in a position to provide an end-user with an adequate broadband internet access service. Melita agreed with the MCA's view that there would only be very few cases when an end-user will not be able to subscribe to an adequate broadband internet access service due to availability issues. Melita noted that broadband availability issues are not only related to the disproportionate and often unjustifiable costs which an operator would need to incur, in order to reach a particular location. Melita argued the few cases where the market is not likely to provide an adequate broadband internet access service would be in areas that are not only difficult and time consuming to reach but may also be controversial. For example, one cannot always get permits to raise poles in the countryside and digging or boring would be required. It is also likely that for some of these cases the necessary permits would be challenging to obtain.

Melita noted that it uses a technology neutral approach to reach its customers across Malta and this irrespective of location. Melita noted that the small clusters of homes which MCA referred to in its consultation as 'few cases' would not fall within the standard cost distribution for technical costs and it may be necessary to come up with custom solutions, with some limitations to facilitate their deployment. Melita noted that that the single biggest cost to serve these end-users, which make up the 'few cases', is the reach of the operator to overcome geographic limitations. Melita suggested that

a government agency, such as Infrastructure Malta, could undertake the implementation of the necessary civil works infrastructures (such as trenches, aerial works, boring etc.). This would allow the operators in the market to reach these end-users at more manageable costs.

**3a. MCA's Comments – Delivering the Universal Service Obligation:** Fast broadband internet access connectivity is a key service, essential not only for families but also for businesses and entrepreneurs. It is important that, in addition to residential premises (homes), business premises (including micro enterprises and small and medium-sized enterprises) and premises used for not-for-profit organisations also have a 'safety-net' allowing access to an adequate broadband internet access service. Lack of access to an adequate broadband service can result in sections of society (including businesses) being excluded from the social and economic opportunities provided by broadband. Independently of the USO for broadband, businesses will, as necessary, continue to seek and pay for tailor-made business solutions which meet their requirements.

The MCA notes that once the decision is adopted, every eligible home or business would have the right to request an adequate broadband internet access service at a fixed location under a USO. The MCA reiterates that requests under a USO would be very few and far between, as in general, the market would be in position to provide a prospective end-user with an available adequate broadband internet access service at a fixed location under normal commercial conditions.

As outlined in the consultation, an operator designated to deliver the USO should supply the broadband internet access connection and service to the end-user's premises as quickly as possible. A broadband connection would in most cases be provided within 30 days. However, the MCA recognises that there may be some instances when the maximum period of 30 days might not be sufficient due to technical considerations or issues related to the deployment of infrastructure. As reflected in the consultation, in some cases the timeline for delivering the connection would need to be extended.

As outlined in the consultation, a designated operator would be required to offer the broadband internet access service, including the underlying connection, at a fixed location at the same price and quality of service levels as equivalent services offered to its non-USO end-users. The geographical and population characteristics of the Maltese Islands, including its small size and high population density allows for uniform pricing of electronic communications services to be adopted across Malta. As reflected in the MCA's 2021 Decision entitled "Review of Universal Service Obligations on Electronic Communications Services ([MCA/D/21-4167](#))", there could be extraordinary circumstances when a higher connection charge to a particular location could be justifiable. This has been the standard approach taken by the MCA when establishing the USO for access to a fixed connection as a universal service.<sup>34</sup>

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<sup>34</sup> Refer to Decision 1 of the MCA's 2021 Decision ([MCA/D/21-4167](#)) entitled "Universal Service Obligation on Electronic Communications Services Decision and Response to Consultation" which states that "the application of a standard connection fee is not being included, since there could be extraordinary circumstances when a higher connection charge could be justifiable".

**3b. Designating an operator to provide the USO:** With regard to fixed wireless access services, GO noted that the speed on the mobile network is dependent on many factors at a given point in time. Attainable broadband speed in certain areas and within the same postcode is impacted by seasonality, time of day, short and long-term events that take place in the vicinity such as the village festa or a new construction. There are major differences in performance depending on location (e.g. indoor vs outdoor, ground floor vs roof etc.), even within a single postcode. Furthermore, GO argued that the number of mobile users in the area and how heavily they are using the network will have an impact on the attainable speed. The attainable connection speed measured at a point in time cannot always be guaranteed to be available consistently or might drastically reduce at any given moment due to a higher level of utilisation. GO does not consider that a wireless speed map would be an effective tool for MCA to designate a universal service provider as this would be unfeasible and unreliable.

Vodafone (now Epic) agreed with the views of the MCA that in cases when an eligible end-user notifies the MCA of his/her inability to secure an adequate broadband internet access service at a fixed location, the MCA shall first issue a request for interest to assess whether an operator is willing to provide such an access prior to designating an operator to deliver the USO. Vodafone also, in principle, agreed with the MCA to directly designate an operator having the closest available fixed broadband network to the end user's premises to deliver the USO when no operator is willing to provide an eligible end-user with an adequate broadband internet access service.

Vodafone argued that since the MCA intends to base its decision on information available from the operators having fixed broadband networks deployed in the relevant area, it must ensure that such information is both accurate and up to date. Vodafone noted that the MCA should take into consideration that the rollout of certain types of fixed broadband technologies can be economically and technically more demanding than others. This, besides the proximity of the fixed broadband network, should be taken into consideration by the MCA in order to ensure the economic efficiency for network deployment under a USO.

**3b. MCA's Comments - Designating an operator to provide the USO:** The MCA will call on one of the broadband operators to ensure the USO when an invitation to express interest has not produced any candidates. The MCA will base its decision on the information available from the operators having broadband networks (fixed wired or wireless networks) in the relevant area and where necessary data collected from users of publicly available electronic communications services. The direct designation of an operator best qualified to provide the USO to a particular location is both efficient and practical, considering the very few cases that would fall under a USO. There will be no constraints on the technical means by which the adequate broadband internet access services at a fixed location is provided under a USO, allowing for wired or wireless technologies (or combination of technologies – e.g. hybrid combined access via fixed and fixed wireless over a mobile network) nor any constraints on which undertakings are designated to provide the USO.

In line with the EECC, the MCA will be required to conduct a geographical survey of the reach of fixed wired and wireless electronic communications networks capable of delivering broadband (broadband networks). In implementing this initiative, the MCA will take into consideration the BEREC Guidelines on geographical surveys of network deployments. When available, the geographical survey will serve

as additional information on the availability at a fixed location of an adequate broadband internet access service cannot be ensured under normal commercial circumstances. The mapping exercise, planned to be in place by 2023, will provide the MCA with additional clarity on the deployment of broadband (mobile, fixed wireless, cable, fibre) in Malta. It will provide additional information, among other things, on those areas where there is no broadband infrastructure; areas in which one network operator may be present and areas in which there are two or more broadband networks of different operators.

**3c. No download data caps:** GO argued that given that the USO is supposedly expected to apply ‘in exceptional cases’, the assumption is that no fixed network that delivers the minimum speeds will be available at most of the USO-mandated sites, a wireless solution could be the more cost-effective.

GO noted that the consultation requires that the ‘minimum’ functional characteristics of an adequate broadband internet access service must not have a download data limit. GO argued that this requirement rules out the available wireless fixed broadband products currently available on the market. GO requested clarifications from the MCA on the following matters in these particular situations:

- i. Would the MCA require a designated USO operator to roll out a physical fixed line connection just because a 400GB limit is deemed not to satisfy the ‘minimum’ USO requirement?
- ii. When assessing “the closest available fixed broadband network” for choosing the designated USO provider, would MCA ignore the availability of radio solutions because existing wireless broadband solutions have a download limit?
- iii. If an operator develops a premium priced wireless fixed broadband solution with no download limit, would the MCA require that operator to offer the service at the same cost as a currently available product with a download limit?

In addition, GO argued that in the event that the copper network is the closest available network however the speeds on such network are below the minimum requirements it should not be penalised and designated to provide the services on the basis that it can use the 4G network to boost the connection speed. GO noted that there might be areas where the 4G network would not adequately increase the speed and other network operators could possibly be in a position to provide the adequate broadband connection entirely over their mobile network without disruption.

Vodafone (now Epic) argued that whilst fixed based broadband technologies service providers do not need to impose data usage limitations (besides traffic management practices), “fixed wireless broadband access services over 4G platforms are standardly subject to data usage caps due to the inherent nature of the wireless access channel”. Vodafone (now Epic) emphasised that due to the limited spectrum bandwidth and the number of users served by the network in certain areas, it would not be feasible to provide uncapped fixed wireless broadband services without negatively impacting other mobile and fixed customers. Vodafone argued that if an operator does not provide uncapped fixed wireless broadband services as part of its standard offerings, such services should be rendered out of scope of this consultation paper and of the USO in general.

**3c. MCA's Comments - No download data caps:** The MCA has defined the minimum functional characteristics of an adequate broadband internet access service which, in addition to download and upload speed, includes quality parameters and an unlimited data cap. With increased internet usage, the service characteristics for a broadband internet access services at a fixed location with unlimited data usage has become absolutely necessary. In fact, today all fixed line broadband providers offer their broadband services with unlimited data caps (subject to traffic management policies). In addition, mobile broadband packages with unlimited data usage are moving mainstream.<sup>35</sup>

With more people working remotely and students continuing their studies through online education (expected to continue even post-pandemic), it is highly impractical for any household or business that needs constant, reliable internet access to effectively use the internet with data caps imposed. An adequate broadband internet access service provided to an end-user at a fixed location is one where, in addition to speed and quality of service parameters, no data cap is imposed.

When assessing the closest available fixed broadband network passing by the premises of an end-user, the MCA will take into consideration the available broadband network technology(ies) capable of achieving the minimum functional characteristics by those operators closest to the end-user. The MCA will also take into consideration the available fixed broadband technology (combination of technologies) that can be provided by an operator in the most cost-effective manner. The MCA would encourage operators to offer an eligible end-user the possibility to access an adequate broadband internet access services, under normal commercial conditions, without the need for the MCA to designate an operator.

**3d. Affordability of an adequate broadband internet access service:** GO noted that the consultation focused on the availability of a broadband internet access service, and not on affordability of such a service. However, GO argued that there might be a conflict between the two concepts. If Operator A offers, at a premium price, a wireless fixed broadband service meeting or exceeding the minimum criteria laid out in this consultation, would a customer be justified in asking the MCA to invoke the USO so that such customer obtains a cheaper priced service that also meets the minimum criteria?

**3d. MCA's Comments - Affordability of an adequate broadband internet access service:** The consultation did not deal with measures to ensure the affordability of an adequate broadband internet access service at a fixed location to consumers with a low income or special social needs who are prevented from accessing such services. Any measures, as well as eligibility criteria, relating to support provided to such consumers, and/or any requirement for undertakings to offer such consumers tariff options or packages different from those provided under national commercial conditions, will need to be determined together with Government and will be subject to a separate exercise. Broadband as a universal service provides a 'safety-net' for end-users to be in a position to request access to an adequate broadband internet access service, including the underlying connection, at a fixed location not necessarily due to affordability of the service, but because no operator has deployed its network in those areas.

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<sup>35</sup> [GO's mobile plans](#), [Melita's mobile plans](#), and [Epic's mobile plans](#) provide unlimited data to be used in Malta.

The MCA does not see the need, as is the case in some other countries, to set an eligibility price threshold, meaning consumers required to pay more than an established amount per month for broadband may be eligible for the USO, depending on the other eligibility criteria. Neither does it see the need to regularly fix ceiling prices for the broadband connection and service forming part of the universal service. The benefit of this approach is that it avoids setting a specific price, and instead links the price to existing prices for a similar or equivalent broadband product available on the market to non-USO customers.

As reflected in the consultation, a designated USP must offer the broadband internet access service, including the underlying connection at a fixed location, at the same prices as equivalent broadband services they offer to their non-USO customers. This means that a designated USP must offer the connection and service on its network at the same price no matter where in Malta an eligible end-user is located i.e. the USP must ensure that its end-users under a USO pay no more for equivalent services than its end-users in another part of the country. It is noted that a wireless broadband service may also be considered under a USO as long as it meets the defined minimum functional characteristics of an adequate broadband internet access service at a fixed location.

As reflected in the MCA's 2021 Decision entitled "Review of the Universal Service Obligations on Electronic Communications Services ([MCA/D/21-4167](#))", any request for the provision of connection and access at a fixed location emanating from within the Maltese Islands should be considered as reasonable. As has been the case since the MCA's USO Decision of 2010, the application of a standard connection fee is not being included, since there could be extraordinary circumstances when a higher connection charge could be justifiable.

**3e. Customer-Driven USO Process:** GO argued that that it should be the customer's responsibility to kick off the request for a broadband internet access service under a USO. GO believes that in most cases customers will be satisfied with their broadband service, in the sense that they will be able to perform all the online activities mentioned in the consultation without necessarily having a 30Mbps download speed. GO argued that the USO process should kick in only if and when specific customers are dissatisfied with the service (or inability to obtain it). In addition, GO argued that in the context of a customer-driven process, the need for the MCA to build a broadband speed database by geo-location is not seen as necessary.

**3e. MCA's Comments - Customer-Driven USO Process:** The universal service requirement for broadband in no way hampers the provision of higher - or even lower - functional characteristics of a wired or wireless broadband internet access service provided by the market. Today there are no commercial offers having a broadband download speed of less than 30 Mbps. In addition, operators encourage the uptake of higher-broadband speeds by terminating legacy broadband packages and offering an alternative to impacted end-users. The MCA acknowledges that there may be some end-users willing to maintain and/or settle for a broadband internet access service having lower functional characteristics than that established under a USO. As outlined in the consultation, the USO process will only kick in following a request from an end-user who cannot access an available adequate broadband internet access service at a fixed location with the defined minimum functional characteristics .

Broadband operators are required to inform end-users that they may seek the assistance of the MCA if no provider is in a position to provide a broadband service that meets or exceeds the defined minimum functional characteristics of an adequate broadband internet access service to their premises. If the market is unlikely to be in a position to meet a reasonable request from an end-user for an adequate broadband internet access service, an end-user can either: (1) settle for an alternative wired or wireless broadband internet access service available on the market; or (2) inform the MCA that an adequate broadband internet access service cannot be secured from an existing operator. If an end-user opts for the second option the MCA will confirm the eligibility of the end-user for the USO and kick-off the USO process.

The MCA notes that a geographical survey of the reach of electronic communications networks capable of delivering broadband is an obligation emerging from the EECC. A geographical survey, will amongst others, facilitate compliance with coverage obligations attached to rights of use of radio spectrum for wireless broadband services. In addition, a geographical survey will serve as an additional tool for the MCA to be in a position to establish to what extent broadband internet access services (fixed-line or wireless) including the functional characteristics of such services are available across Malta. End-users would also be in a better position to check the broadband internet access services available to their premises.

#### **4. Next Steps**

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The purpose of the publication is to inform stakeholders of the outcome of the consultation and the approach to be taken by the MCA to ensure the availability of an adequate broadband internet access service at a fixed location (refer to the proposed decision in **Appendix 1**) as an universal service.

The MCA will issue its final decision on the functional characteristics of an adequate broadband internet access service for and the process for ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location as a universal service following the transposition of the EECC into national legislation.

The final decision will supersede the MCA's 2011 Decision Notice entitled "Provision of access at a fixed location - Requirements to be compiled with by the USP in relation to Functional Internet Access" ([MCA/D/11-0314](#)).

## Appendix 1: Proposed Decision

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Pursuant to the Electronic Communications (Regulation) Act, Cap 399 of the Laws of Malta and having regard to the applicable provision of the Electronic Communications Networks and Services (General) Regulations<sup>36</sup>, the proposed decision is outlined below.

### 1. Broadband universal service: Functional Characteristics

Subject to **paragraph 2**, an adequate broadband internet access service, including the underlying connection, at a fixed location must be provided throughout Malta with all the following functional characteristics:

- a download sync speed of at least 30 megabits per second;
- an upload sync speed of at least 1.5 megabit per second;
- latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and
- an unlimited data usage cap.

### 2. Broadband universal service: Eligibility

**Paragraph 1** only applies to the extent that the following conditions are met:

- the connection is to a fixed location consisting of a place of residence, of a business premises, or of a premises used by a not-for-profit organisation;
- a prospective end-user requests that a connection is provided to that location; and
- a broadband internet access service on an existing network that meets or exceeds the minimum functional characteristics under **paragraph 1** is not available to that location.

### 3. Broadband Universal Service: Universal Service Obligation

If an eligible end-user requests the support of the MCA, the MCA will issue a request for interest to assess whether an existing operator is willing to provide the end-user with an adequate broadband internet access service, that meets or exceeds the minimum functional characteristics defined in **paragraph 1**, under normal commercial conditions.

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<sup>36</sup> Refers to the proposed Regulations replacing the current Electronic Communications Networks and Services (General) Regulations (S.L. 399.28 of the Laws of Malta) as reflected in the public consultation document on the transposition of the EECC published by the Ministry for the Economy and Industry on the 11<sup>th</sup> January 2021.

In default of an expression of interest, the MCA shall directly designate an operator its deems most suitable to deliver the USO, taking into consideration the public electronic communications networks passing closest to the end-user's location.

#### **4. Pricing and Delivery of the Universal Service Obligation**

A designated operator is required to offer the broadband internet access service, including the underlying connection, at a fixed location at prices which are uniform throughout Malta and are equivalent to services offered to its non-USO end-users, unless the MCA has determined that there is clear justification for not doing so.

A designated operator is required to offer the same level of quality of service to premises connected under the USO as it does to premises connected to the rest of Malta.

A designated operator is required to supply the broadband internet access service, including the underlying connection, to the end-user's premises as quickly as possible and within a maximum period of 30 days after the eligible end-user has placed his/her order for an adequate broadband internet access service, unless there are exceptional circumstances that make it more difficult.

Once an end-user enters into a contract with the designated operator for the provision of an adequate broadband internet access service, their relationship will be one of a normal customer's relationship with the retail provider.

#### **5. Reporting on the Universal Service Obligation**

A designated operator providing the USO is required to report annually on the:

- type of technology(ies) used to provide the broadband internet access service, and the underlying connection, at a fixed location to an end-user;
- functional characteristics of the broadband internet access service provided to an end-user;
- supply time for the initial connection to an end-user's premises; and the
- type of premises (residential, business or not-for-profit organisation) connected and their location.

#### **6. Broadband Universal Service: Monitoring**

The MCA will monitor the robustness of the Decision and reserves the right to make periodic adjustments as necessary in consultation with the operators providing broadband internet access services, or any other third parties.

The MCA will periodically review the characteristic of an adequate broadband internet access service, as reflected in **paragraph 1**, to reflect advances in networks and equipment, prevailing bandwidth used by the majority of subscribers and changing social and economic conditions.

#### **7. Broadband Universal Service: Effective Date**

The final Decision will be effective from the date indicated by the MCA and shall remain in force until further notice by the MCA.

The final Decision will supersede the MCA's 2011 Decision Notice entitled "Provision of access at a fixed location - Requirements to be compiled with by the Universal Service Provider (USP) in relation to Functional Internet Access" ([MCA/D/11-0314](#)).