

Universal Service Obligations on Electronic Communication Services

Decision and Response to Consultation

Published 12th May 2015

Internal Reference MCAOPS/tf/152265

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EXECUTIVE SUMMARY

In accordance with local legislation, the Malta Communications Authority (hereinafter referred to as "MCA") is required to ensure that a number of identified electronic communication services of specified quality are made available to all end-users in the Maltese islands, independently of geographic location, and, in the light of specific national conditions, at affordable prices. Obligations imposed by the MCA on operators designated to provide these services are referred to as Universal Service Obligations (hereinafter referred to as "USO"). Universal services would include those services with specialised tariff options to ensure that all users, including consumers with low income or with special social needs, can afford the universal services in question and control expenditure.

A consultation document was published on the 5th November 2014 to analyse and identify which services should be considered as universal services, whether any of the current universal services should be updated and/or waived, and to identify which undertaking or undertakings should be designated as responsible to provide the universal services.

Following the public consultation which ran to the 5th January 2015, the MCA received feedback from two entities namely GO plc (hereinafter referred to as "GO") and Melita plc (hereinafter referred to as "Melita"). Their submissions together with MCA's reactions are integrated in this decision.

Entities willing to be designated or to carry on being designated, with the responsibility to provide the universal service or part thereof are invited to express their interest to the MCA. Undertaking or undertakings responsible for the provision of all or part of the universal services may request a claim for funding in relation to any unfair burden it claims to have suffered as a result of providing each respective USO. The MCA would subsequently evaluate the information submitted by the undertaking in order to determine whether an unfair burden really exists.

The revised universal service obligations shall come into effect as from 1st July 2015.

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1. INTRODUCTION

Universal Services are defined as the minimum set of services of specified quality which are to be made available to all end users in the Maltese islands at affordable prices, regardless of their geographical location, and in the light of specific national conditions. The objective of universal services is to promote social inclusion of electronic communications services, and to place on designated undertakings obligations to provide a minimum set of services to all end users, including vulnerable groups. Vulnerable groups include persons on low income, residents of rural or high installation cost areas, and persons with disabilities.

The universal service regime prior to the publishing of this document was established in a decision published by the MCA in April 2010 entitled *'Universal Service Obligations on Electronic Communication Services Report on Consultation and Decision'* and updated in 2011. According to this decision, in default of an expression of interest, and in the case where applicants failed to satisfy set criteria, GO plc was designated as the organisation responsible to provide the following Universal Services: Provision of Access at a Fixed Location; Direct Enquiry Services and Directories; Public Pay Telephones; Special Measures for Disabled Users; Provision of Reduced Tariff Options for Users and Ensuring Users can Control Expenditure.

In accordance with national legislation and the EU framework, the MCA, as the entity responsible for the regulation of the Maltese electronic communications sector, required to decide at reasonable intervals, following a detailed analysis and assessment, whether an electronic communications service should be considered as a universal service, and whether a current universal service should be updated or revoked.

The MCA is also required to adopt an efficient and appropriate approach for the purpose of ensuring that universal services are being implemented and social requirements fulfilled. The Authority is required to decide which undertaking or undertakings should be designated with the responsibility for the provision of one or more of the constituent elements of the universal services.

The consultation published in November 2014 entitled *'Consultation on Universal Service Obligations on Electronic Communication Services'* aimed at examining the scope of the universal service, in particular in relation to the obligation/s to be met by the designated undertaking/s. It also considered the designation of the relevant undertaking or undertakings that shall be responsible for the provision of all or part of each of the universal services. Finally, the consultation also created the cost and funding methodology applicable for a claim for funding to be submitted by an undertaking in respect of the provision of the universal services.

The MCA invited interested parties and stakeholders to send their feedback in writing to the Authority by the 5th January 2015. Feedback to this consultation was received from two interested parties namely

¹ Electronic Communications (Regulation) Act, Cap. 399, Part 1

GO plc and Melita plc. The MCA thanks all respondents for their contributions, and is including a summary of the feedback received in each of the respective sections of this Decision.

2. LEGAL BASIS

The fundamental aspects of the universal service regulation are outlined in the Universal Service Directive² (hereinafter referred to as the "USD Directive"), the Electronic Communications (Regulation) Act, Cap.399 (hereinafter referred to as the "Act") and the Electronic Communications Networks and Services (General) Regulations, SL 399:2011 (hereinafter referred to as the "Regulations"). These include *inter alia* the provision of access at a fixed location and provision of telephone services, directory enquiry services and directories, public pay telephones and other comparable services and measures for disabled end-users.

Article 4(3) of the Malta Communications Authority Act Cap.418 (hereinafter referred to as the "MCA Act") establishes that the Authority is entitled to enforce, regulate, monitor, and keep under review all practices, operations and activities being regulated and carry out any research or investigation of any matters regulated by or under the MCA Act. The MCA Act establishes that it shall promote the interest and rights of all end-users including the disabled, the elderly and those with special needs.

Part V of the Regulations entitled "Universal Service Obligations" highlights the importance of the provision of the universal services at specified quality and at affordable rates to all users, amongst other conditions outlined under each universal service. Regulation 21 to 32 of the Regulations gives the Authority the power and obligation to review the USO, designate the universal service provider (the "USP") and to establish a funding mechanism for any compensation of unfair burden in providing such services. Regulation 23 specifies that the designated undertaking shall satisfy all reasonable requests to provide connection at fixed location for national and international calls and such connection shall be capable of supporting voice, facsimile and data services. Regulation 24 establishes that a designated undertaking shall ensure that a comprehensive directory and update directory enquiry services are made available to all end-users. Regulation 25 establishes that public payphones shall be accessible to disabled end-users and shall meet the needs of end-users in terms of geographical coverage and quality of service. Regulation 26 specifies that the Authority shall ensure that disabled end-users can enjoy access to and affordability of the services described under Part V. Regulation 27 describes that the USO specified in regulations 23 to 26 shall be available at affordable rates and in relation with the average consumer income and that the Authority has the right to monitor the evolution and level of USO retail tariffs. Regulations 28 and 29 specify that end-users shall have the facility to control their expenditure in order to avoid any unwanted disconnection of services and that the designated undertaking shall publish up-to-date information on its performance in terms of quality of service in relation to its provision of the universal services.

The Authority may designate one or more undertakings for a period of time that may be specified by the MCA in order for the undertaking to comply with the obligations referred to in regulations 23 to 29. In designating an undertaking, the Authority is required to adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby an undertaking is *a priori* excluded from being designated. The designation methods adopted must ensure that the above universal services are

² USD 2002/22/EC, Recital 8

provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation.³

³ SL399.28 Regulation 22(4)

3. UNIVERSAL SERVICE OBLIGATIONS

3.1 Universal Services and Designations prior to this Decision

The following services had been established as Universal Services in the MCA USO Decision published in April 2010⁴:

- Provision of Access at a Fixed Location;
 - Connection to the public telephone network and access to publicly available telephone services;
 - Connection to Functional Internet Access.
- Directory Enquiry Services and Directories:
 - Comprehensive Electronic Directory;
 - Printed Telephone Directory;
 - Telephone Directory Enquiry Service.
- Public Pay Telephones;
- Provision of Specific Measures for Disabled Users;
- Provision of Reduced Tariff Options;
- Ensuring Users can Control Expenditure.

With the exception of the Printed Telephone Directory, GO is currently providing all the above services as the designated undertaking.

In its Consultation Paper published in November 2014 the MCA examined each of the above services and the following part of this Section also presents any consultation feedback received and the final MCA decision.

⁴ Updated in September, 2011

3.2 Provision of Access at a Fixed Location

As stated earlier in the introduction to this decision, one of the fundamental requirements of the universal service is to provide end-users with a connection to the public telephone network at a fixed location at an affordable price upon request. According to Regulation 23(1), the designated undertaking needs to satisfy “all reasonable requests” for the provision of publicly available service over the network connection.⁵

The connection provided by the designated undertaking is required to enable end-users make and receive local and international calls, and support facsimile and data communications. This is subject to prevailing technologies used by the majority of subscribers and technological feasibility.⁶ Conditions associated with the latter requirement are delineated further in section 3.2.2 below.

3.2.1 Connection at a Fixed Location

In line with the Regulations, the MCA may specify requirements which are to be complied with by a designated undertaking in relation to the reasonableness of requests for connection at a fixed location to the public telephone network, and for access to publicly available telephone services at a fixed location.⁷

Considering the geographical and population characteristics of the Maltese Islands, including its small size and high population density, the MCA is of the view that any request for the provision of connection and access at a fixed location emanating from within the Maltese Islands should be considered as reasonable. The application of a standard connection fee is not being included since there could be some rare occasions when a higher connection charge could be justifiable.

One of the respondents welcomes the fact that the designated undertaking shall only provide access at a fixed location if there are no other public communications network providers in a position to provide connection at an affordable price to the end user. The same respondent noted that notwithstanding the small size and high population density of the Maltese islands, there are still instances where the provision of a connection could be costly. It also pointed out that this universal service should only be applicable in the case of an end-user's household primary residence, making reference to the European Commission's US Directive⁹ and to a presentation by a speaker made on behalf of the European Commission that took place in April 2009.

⁵ SL399.28 Regulation 23(2)

⁶ SL399.28 Regulation 23(1)

⁷ Ibid., Regulation 23(3)(b)

⁸ Including Gozo and Comino

⁹ Directive 2002/22/EC

The MCA acknowledges that recital 8 of the US Directive states that "... The requirement is limited to a single narrow band network connection, the provision of which may be restricted by member states to the end-user's primary location/residence...". The Authority does not agree that the provision should be restricted to the end-user's primary location/ residence, it also has taken into account that a large percentage of the Maltese islands, whether of a primary residence nature or not, already have access at a fixed location covered by the designated undertaking or/and other fixed line service providers. The MCA is also taking into consideration that the application of a standard connection fee is not being included and there could be some rare occasions when a higher connection charge could be justifiable.

Furthermore, as stated in the consultation document, in view of the fact that access at a fixed location in the Maltese islands is now being provided at an affordable rate by more than one telephone network, the MCA has decided that the obligation on the designated undertaking to provide access at a fixed location shall only be applicable in case there are no other public communication networks in a position to provide a connection at a fixed location to the end-user in a given area, at an affordable price.

To this effect, the MCA has decided to retain the decision as originally stated in its consultation.

Decision 1

The universal service shall include access at a fixed location in any given area only in the case when there are no other public communications networks in a position to provide connection at a fixed location to the end-user at an affordable price.

Such a connection must be capable of allowing end-users to make and receive local and international calls, facsimile communications and data communications.

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

3.2.2 Functional internet access

As an integral part of the requirements for the provision of access at a fixed location, the Regulations state that any connection provided by a designated undertaking shall be capable of allowing users to make and receive data communications, at data rates that are sufficient to permit functional internet access. In 2011, the MCA updated the USO Decision by publishing another decision entitled “*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*” realigning the definition of ‘Functional Internet Access’ to include broadband internet access as specified in the same Decision.

As part of the scope of the universal service, the MCA has proposed to retain the requirement that, in case of market failure, the designated undertaking shall provide functional internet access with a line speed of at least 4 Mbps as well as any other requirements found in the above mentioned Decision on Functional Internet Access. In case that there is no other service provider providing access to this service to the end user, the designated undertaking shall satisfy the request of the user and provide access to this service.

One of the respondents to the consultation showed strong reservations what it claims to be an unjustified extension of the USO framework. It stated that the ‘moving download speed target’ introduces new hurdles for investors to take risks and build NGA networks. It suggested that as a minimum the download speed requirement should be capped at the current level. The MCA would like to point out that since the contents of the decision ‘*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*’ published in June 2011 has remained unchanged, the concerns by the respondent are in MCA’s opinion automatically addressed.

Decision 1a

In case of market failure and where no other service provider is willing to provide functional internet access to the end user requesting the service, the universal service shall include functional internet access with a line speed of at least 4 Mbps and any other requirements listed in the MCA decision “*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*”.

3.3 Directory Enquiry Services and Directories

The Regulations state that one or more undertakings may be designated by the MCA in order to ensure that:

- a comprehensive directory, which includes subscribers of publicly available telephone service providers, is made available to all users in a form approved by the Authority, whether printed or electronic, or both, as the MCA may determine, and is updated at least once each year; and
- a comprehensive telephone directory enquiry service is made available to all users, including users of public payphones.¹⁰

In order to enable the provision of directories and directory enquiry services, regulation 42 (2) regulations further specifies that any undertaking which assigns telephone numbers to subscribers shall make available, the relevant information to providers of directory enquiry services and directories in accordance with an agreed format and on terms which are fair, objective, oriented and non-discriminatory. In April 2015, the MCA published a separate decision to determine the conditions under which an undertaking may be required to share subscriber directory information with providers of directory services.¹² These include electronic directories, directory enquiry services and printed directories.

In accordance with the relevant data protection rules, this directory information should only include details of those telephone subscribers whose consent was given to their telephone service provider to release their personal data for directory information services.

The MCA has taken into account the changing needs of users in Malta, as well as advances in technologies that render the availability of information generally sought by means of directories and directory enquiry services in a more efficient and cost-effective manner. Additional intelligence on end-users' directory related needs has also been obtained from an MCA commissioned survey, the results of which are being described below.

¹⁰ SL399.28 Regulation 27(1)

¹¹ Including the provider/s which may be designated to provide a directory or directory enquiry services as a universal service obligation

¹² Link to decision <http://www.mca.org.mt/decisions/decision-wholesale-access-data-and-provision-publicly-available-directory-information>

3.3.1 Comprehensive electronic directory

A comprehensive electronic directory provided as a universal service by GO through its public Internet website¹³ has been available to the general public since 2006 (return telephone numbers (fixed and mobile) of all consenting subscribers

Since end-users are already being provided with such a comprehensive electronic telephone directory free of charge and updated in real time whenever technically possible, the MCA proposed to retain this universal service obligation.

The MCA also notes that market realities, end-user behavior, and technical capability have changed since the introduction of the provision of the comprehensive electronic directory, including the fact that end-users are making more calls to mobile telephone numbers than before the need to easily and promptly look up mobile numbers has increased due to the significant proliferation of smartphones, the need to easily and promptly have access to the comprehensive electronic directory whilst on the move has also been created. Since in its nature a smartphone has a smaller screen size than a conventional PC, apart from the current web-based interface, the introduction of a smartphone app to access the comprehensive electronic directory was considered. Besides being a potentially positive branding exercise for the universal service provider, such an initiative strengthens the case to drop the printed telephone directory as a USA as mentioned further below.

Both consultation respondents have in general supported MCA's decision to take into consideration developments in technology and end-user behavior, and also commented positively on the measure for a smartphone interface due to the significant increase in use of smartphones and mobile devices. Both respondents also commented on the provision of the operators' directory related data to the designated undertaking, and also to other authorised directory service providers. In MCA's opinion such matters have already been addressed in a separate public consultation and a decision which was recently published by the MCA entitled 'Wholesale access to data for the provision of publicly available directory information services' which was referred to earlier in this document.

Decision 2

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

- web-based;
- effectively provide the opportunity to easily and promptly look up subscribers of publicly available telephone services in Malta regardless of technology and operator;
- include an interface that caters specifically for smartphone-based users

¹³ Link to GO's electronic directory <http://www.go.com.mt>

All telephony providers shall ensure that their consented subscribers' directory-related data is made available in realtime whenever technically feasible, to the requesting designated undertaking for the sole purpose of providing directory information services.

3.3.2 Printed directory

In the 2010 USO Decision, the MCA had established that a printed directory including the numbers of all fixed telephony subscribers was to be provided and distributed free of charge to all fixed line telephony subscribers as a universal service.

Following the publication of the 2010 decision, the MCA had received three expressions of interest from separate entities interested to publish the printed directory as a universal service. At various stages of a lengthy adjudication process, all three applicants were eventually disqualified for not reaching the required set criteria. As a result, the MCA had immediately contacted GO to discuss the way forward, since as established in the 2010 decision, in default of other successful bidder, GO was to be designated to publish the printed directory. However, during the latter part of 2012 another entity notified with the MCA for a General Authorisation to provide *Publicly Available Telephone Directories and Directory Enquiry Services* with the intention to publish a printed directory. As a result of this development the MCA did not pursue GO to publish this directory as a universal service obligation. Eventually, even this undertaking notified the MCA that it had decided to publish this directory and accordingly withdrew its General Authorisation in March 2014.

Taking into consideration the development of the electronic communications sector since the publication of the 2010 decision, prior to publishing its consultation in November 2014 the MCA analysed whether the provision of a printed telephone directory should continue to be considered a universal service obligation from four main aspects, namely

- end-user directory needs and usage,
- availability of other directory sources,
- cost and funding, and,
- future commercial possibilities.

A. End-user directory needs and usage

In 2014 the MCA appointed a specialised third party to commission a Public Perception Survey with the objective to identify how often end-users required to look for a new residential number, whether subscribers still felt the need to refer to the printed telephone directory when searching for a number, and whether they had found alternative sources so much soother than the printed directory.

The survey results showed that 71% of participants (half of whom were over 50 years of age) claimed that they never or rarely required searching for a new residential number during the prior six months whilst only 7% claimed that they frequently looked up such a number.

When the survey participants were asked what source they would use to look up a residential number, 62% stated that they use other sources than the printed directory.

From this survey, it also transpires that 82% of participants have never or rarely used the printed telephone directory, 16% used it sometimes and only 3% used it frequently. In addition, 40% believe that the printed directory is not relevant anymore when compared to other alternatives. From the remaining participants who believe that the printed directory is still relevant, 65% admitted that they rarely or never needed to search for a new residential number.

When asked if they would be interested to purchase a copy of the printed telephone directory in the case it would be made available at a reasonable charge, 64% of participants stated that they would not purchase a printed telephone directory, whilst 71% of the remaining participants were not willing to pay more than €5.

B. Availability of other directory sources

Since the last publication of the printed telephone directory, various technologies have evolved enabling end-users to utilise more efficient alternative sources to search for a telephone number. Given that the Internet penetration rate of households in Malta and Goz has increased substantially over the past years, reaching 80.7% in 2014¹⁴, thousands of these households have access to the Comprehensive Electronic Directory which is being provided free of charge by GO online website as a universal service.

When assessing whether a printed telephone directory is required to be retained as a universal service, one also needs to take into consideration that business printed directories which include telephone numbers of individual tradespersons and professionals, are currently available throughout the Maltese islands. There has also been a complete revolution in the way personal communication takes place with a shift to social networks and instant messaging i.e. Facebook, Skype, WhatsApp etc. Ultimately, one also needs to keep in mind that when users have no access to the Internet, they may nevertheless still access directory data by calling a directory enquiry service at an affordable price.

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http://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C4/Education_and_Information_Society_Statistics/Documents/2015/News2015_042.pdf

C. Cost and funding

It is imperative that one takes into consideration that an undertaking which is legally designated to provide universal services has the right to claim the net cost it incurs to provide such a service.

As a result of the information compiled from past Expressions of Interest, the estimated costs to publish and distribute the fixed telephony directory to all fixed line subscribers free of charge as a USO was in excess of one million Euros

Considering the magnitude of the cost and the probability that USO funding would be claimed by the undertaking designated with such an obligation and the outcome of the end-user needs and uses analysis as depicted above, the MCA is of the opinion that more efficient and effective use of such funds could be made. Examples include the governments involvement and substantial financing of various ICT programmes which have a long term benefit in promoting digital literacy in Malta, and the operators' current heavy investment in next generation networks which improve the country's competitiveness

D. Future commercial possibilities

The existing authorisation framework allows any undertaking that operates in a commercial business case for publishing a printed directory to obtain the required subscriber directory information from telephony operators whether it is listed as a universal service or not. Such commercial undertakings would be required as a prerequisite to register with the MCA under a simple General Authorisation process which only requires a notification procedure. Accordingly there are no legal or regulatory barriers in this regard as long as the appropriate notification process and data processing is followed. Furthermore, as already stated, the MCA recently published a decision to determine the conditions under which an undertaking may be required to share subscriber directory information with providers of directory services.

After assessing the considerations mentioned above in its consultation paper the MCA proposed not to retain the printed telephone directory as a universal service. Given that in the past some members of the general public had shown concern that the printed directory has not been published for a number of years, in order to ensure public awareness of this proposal besides publishing the consultation document on its website the MCA also featured this proposed decision on the national television station's prime time news.

The MCA only received feedback on this subject from one respondent welcoming the proposed measure, and also making reference to the environmental impact the publishing of such a directory would entail.

The MCA has thus decided that the printed telephone directory would not be retained as a universal service. Nevertheless, third parties may still publish a printed telephone directory on a commercial basis

by notifying the Authority for a General Authorisation to provide *Publicly Available Telephone Directories and Directory Enquiry Services.*'

Decision 3

Given the availability and development of the comprehensive electronic directory, the universal service obligation for the provision of a printed telephony directory including the telephone numbers of all subscribers of publicly available telephone services at a fixed location is being withdrawn.

3.3.3 Telephone directory enquiry services

Telephone directory enquiry services are currently being provided by other service providers apart from the undertaking which had been designated in the 2010 Decision. This service is provided at a charge since as permitted by law and allowed by the Decision the universal service regime does not require to be provided for free but at affordable rates. In the past, the MCA allocated third parties various short codes in the 118X numbering range (which is specifically earmarked for directory enquiry services in the National Numbering Allocation Plan). The MCA however, is also taking into account that the service may be of higher sensitivity to visually impaired persons and this matter is being addressed in Section 3.5.1 below.

Since the general public has access to more than one comprehensive telephone directory enquiry service at affordable rates, the MCA proposes to withdraw this universal service obligation with the exception to the conditions listed in decision 6 below.

One of the respondents commented that although the directory enquiry service is considered as competitive, the requirement for operators to make directory related data readily available to directory providers should be imposed and enforced in order for the service to remain effective and the market remain competitive. The MCA reiterates that all operators are required at law to provide directory data and made available in the most efficient and effective way in the shortest possible time. This requirement is maintained through the publication of the MCA's separate decision notice on *Wholesale access to data for the provision of publicly available directory information services*' which has been referred to earlier in this document.

Decision 4

The universal service obligation for the provision of a comprehensive telephone directory enquiry service is being withdrawn with the exception to the conditions listed in decision 6 below.

3.4 Public Payphones

In accordance with the Regulations, public payphones shall be made available to meet the needs of end users in terms of geographical coverage, quantity, accessibility to disabled users, and quality of service.¹⁵ The designated undertaking shall ensure that these public payphones are able to make calls to 112¹⁶ emergency number and any other national emergency call numbers free of charge without the necessity to use coins or any other means of payment.¹⁷ The designated undertaking shall also ensure that these payphones offer access to directory enquiry services.¹⁷

GO, as the undertaking designated to provide this universal service, currently has in operation a substantial number of payphones distributed around Malta and Go. During a recent analysis, it transpired that GO is actually making losses from a number of individual payphones located in different areas. Various factors, including the increase in the mobile telephony penetration rate, are contributing towards a sharp decrease in public payphones usage. In fact, from statistics collected by the MCA, the number of payphone calls made to local and foreign numbers decreased substantially from 1,730,929 in 2009 to 790,415 in 2014 and this declining trend is envisaged to continue.

Notwithstanding the above, in some instances the availability of public payphones could still be essential for those users that do not have access to a landline or a mobile phone, or possibly whose phone power has ran out. This consideration is the more important in the case of an emergency and where there are no other means of communication at hand.

Accordingly, the MCA in its Consultation Paper had proposed that the designated undertaking would be entitled to remove a public payphone as long as the following conditions are satisfied:

- A minimum of 2 payphones per locality with a population of <4,000 residents are maintained;
- A minimum of 3 payphones per locality with a population of <10,000 residents are maintained;
- A minimum of 4 payphones per locality with a population of >10,000 residents are maintained.

The MCA had also proposed that the designating undertaking still wishes to apply for the removal of a payphone although the distance to the closest working public payphone would exceed 2 kilometers, it shall place an application with the MCA for its evaluation and consideration with the following information:

- The exact location of the payphone;
- Its distance from the closest working public payphones located on-site and/or adjacent localities;

¹⁵ SL399.28, Regulation 25 (1)

¹⁶ SL399.28, Regulation 25 (4)

¹⁷ SL399.28, Regulation 25 (5)

¹⁸ Locality denotes an entire area falling under the responsibility of a particular local council

- Its utilisation rates including details of calls, volumes in minutes and revenues; and
- A comparison with the average national public payphone utilisation rates.

A respondent to the consultation stated that it supports the reduction in public payphones as nowadays this service is not frequently used due to the increase of mobile services and internet based apps and WiFi, supporting fixed to mobile substitution. The other respondent stated that the increase in mobile subscriptions and decrease in public payphone usage should trigger the removal of public payphones as a USO as is the case in other European countries. It is strongly not in favour of a minimum distance required to remove a payphone specified in the consultation, as it supplants and renders ineffective the minimum payphone number criteria per location.

As stated earlier, the MCA acknowledges that the increase in mobile telephony penetration has, and is contributing towards a sharp decrease in public payphone usage, however the MCA still believes that at this stage retaining a minimum number of public payphones per locality as a universal service is still appropriate.

After taking into account the feedback received, that MCA has decided to retain the proposed population-related requirements, whilst amending the requirement relating to distance between functional payphones.

The MCA has accordingly decided that where the population-related conditions are satisfied, the designated undertaking would be entitled to proceed with the removal of the payphone/s in question without the specific approval of the Authority. This is subject to the condition that at least thirty days prior to the removal of each public payphone, the designated undertaking shall concurrently inform the MCA, and the respective local council, which payphone/s is/are being removed, its/their exact location, and the distance to the closest public payphone. The MCA reserves the right that in exceptional circumstances, such as in the case of excessive distances from the nearest access to a telephone, to instruct the designated undertaking not to pursue with the removal of the public payphone/s in question. In these cases the MCA will consider any feedback that may be received from the general public, including the local council concerned.

In all cases, prior to the removal of a payphone the designated undertaking is required to display a notice on the payphone itself for a minimum period of two weeks and shall include information on the location of the other closest payphones, and any other information as deemed necessary by the Authority. This is without prejudice to any other requirements of other Authorities and/or Governmental entities which could be relevant for the removal of public payphones (e.g. when the public payphone is protected as part of Malta's national heritage).

The above parameters do not release the designated undertaking from the obligation to maintain additional public payphones, as may be required, in order to meet particular user needs. The designated undertaking shall provide the MCA with an updated inventory listing all payphones installed at that time and their respective location and telephone number in order for the Authority to keep its public payphones records updated.

Decision 5

The universal service shall include the provision of public payphones in each locality in the Maltese Islands.

In case the designated undertaking intends to remove a payphone, it is required to concurrently inform the MCA and the respective local council of its exact location at least thirty days prior to its removal, subject to the following parameters established by the MCA to ensure a safe and reasonable coverage:

- A minimum of 2 payphones per locality with a population of <4,000 residents are maintained;
- A minimum of 3 payphones per locality with a population of <10,000 residents are maintained;
- A minimum of 4 payphones per locality with a population of >10,000 residents are maintained

In all cases, prior to the removal of a payphone the designated undertaking is required to display a notice on the payphone itself for a minimum period of two weeks and shall include information on the location of the other closest payphones, and any other information as deemed necessary by the Authority.

The MCA reserves the right to instruct the designated undertaking not to proceed with the removal of the public payphone/s in question in exceptional circumstances such as in the case of excessive distances from the nearest access to a telephone. In these cases the MCA will consider any feedback that may be received from the general public, including the local council concerned. The above parameters do not release the designated undertaking from the responsibility of maintaining additional public payphones, as may be required, in order to meet particular user needs.

This is without prejudice to any other additional requirements of other Authorities and/or Governmental entities which could be relevant to the removal or otherwise of public payphones.

3.5 Specific Measures for Disabled Users

According to the Regulations, the MCA may specify obligations on a designated undertaking for the purpose of ensuring that disabled end-users can access publicly available telephone services equivalent to those enjoyed by other end-users at an affordable rate, including access to emergency services, directory enquiry services and directories¹⁹

In line with the 2010 USO decision, GOs the undertaking designated to provide specific measures for disabled end-users, is required to provide free directory enquiry services for visually impaired persons as well as a 'Telecare' type of service. Given that these measures are currently being well received by disabled end-users, in its consultation paper the MCA proposed to retain these universal service obligations under the same conditions.

3.5.1 Free directory enquiry services for visually impaired persons

The designated undertaking is currently required to provide one call free of charge per week to a directory enquiry service to eligible visually impaired persons included in a list specifically provided by the responsible Government entity.

If the undertaking foresees that the number of people using this facility is excessive to the extent that it requires funding to sustain the unfair burden, it shall inform the MCA accordingly. The Authority shall decide whether such a list should be capped to a maximum number of people, and if this is not the case, a funding option would need to be considered.

Whilst in principle one of the respondents is not opposed to this proposal, it reiterated the importance of a robust mechanism to ensure that only genuine cases are taken into consideration. Given that currently the list of eligible users originates from the responsible Government entity this should not be an issue.

Decision 6

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

¹⁹ SL399.28 Regulation 2(1)

3.5.2 'Telecare' type of service allowing easy access to emergency/assistance services

The "Telecare" type of service which has been provided by the designated undertaking for a number of years, includes an alarm unit that automatically dials a Control Centre once it is activated either by a large button on the telephone set or by means of a button found in a portable pendant. The MCA considers that there is no need to impose any additional functionality as a Universal Service obligation.

The designated undertaking is allowed to charge subscribers who are not benefiting from reduced tariff schemes (currently in place for social reasons) a nominal deposit for misplaced, lost or damaged Customer Premises Equipment (CPE) pendants. However, if the number of misplaced CPEs is high the effect that the designated undertaking is incurring a substantial cost, it shall inform the Authority accordingly. The nominal charge should be reflective of the cost of the pendant and should either be deducted from any deposit received or charged directly to the end user.

Decision 7

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

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

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

3.6 Reduced Tariff Options to Ensure Affordability

According to the Regulations, the MCA may specify requirements on the designated undertaking order to ensure that electronic communications services are available at prices which are affordable to all end users. In order to ensure affordability, the MCA may require the designated undertaking to provide reduced tariff options or packages which are lower than those offered to other subscribers so that persons on a low income or with special social needs may have access to such universal services²⁰

GO as the undertaking designated to provide reduced tariff options a universal service is currently providing a reduced 'line-rental' tariff scheme to eligible subscribers specifically included in a list

²⁰ SL399.28 Regulation 27 (2)

The MCA is of the opinion that this scheme is meeting the objectives of the universal service successfully and therefore should be maintained.

One of the respondents claimed that support should be directly provided by State as a proper mechanism to deliver this social service. The MCA believes that the USO financing framework applicable to all universal services as specified in this document is fair and reasonable even in the case of this particular universal service. The MCA believes that it should not define the administrative mechanism and operational arrangements involved in this particular respect, the designated provider may discuss this aspect with the responsible Ministry or Government Department.

Decision 8

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

3.7 Control of Expenditure by users

The MCA recognises the importance of facilities through which users may monitor and control expenditure in order to ensure continued affordability and avoid any unwanted disconnection of services. The services currently being provided to help such monitoring and control by the user are selective call barring for outgoing calls, and pre-payment facilities

Since the Authority considers that the facilities currently being provided are reaching this goal, obligation for provision of these services as measures for users to control their monthly expenses in the manner described in Schedule 4 Part A of Regulations is being retained²¹

3.7.1 Free of charge selective call barring for outgoing calls

The Regulations state that the designated undertaking shall provide the facility where a subscriber can request to bar outgoing calls, particularly types of numbers such as premium rate services, as a means for consumers to control expenditure free of charge²²

²¹ SL399.2 Fourth Schedule Regulation 28(2) USD2002/22/EC, Recital 15

²² SL399.2 Fourth Schedule, Part A (2)

In its Consultation Paper the MCA proposed to retain the requirement in which the designated undertaking provides the possibility for consumers to be in a position to either block all outgoing calls, unless a code control barring facility is available to selectively block calls to particular types of numbers including calls to mobile, international and premium rates services, or outgoing calls which incur a comparatively higher price than calls to local fixed telephone numbers. This service shall continue to be provided free of charge.

One of the respondents stated that the categories of calls that can be barred should be as limited as reasonably possible. Such respondent also stated that, considering the very low cost of access, the designated provider should not have to provide a connection that is designed not to make calls. The MCA is of the opinion that if the designated undertaking offers a code control barring facility, in which an enduser may restrict all outgoing calls unless a specific code is entered, the obligation to bar all outgoing calls would not be applicable.

Decision 9

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

- mobile calls
- international calls
- premium rate services
- all outgoing calls unless a code control barring facility is available*

This decision shall be without prejudice to any other decision or directive that may be published by the MCA which could extend such obligations to other operators in accordance with the law.

***Calls to emergency services ‘112’ should never be barred and calls to “free to caller” numbers should not be barred when technically feasible.**

3.7.2 Pre-payment services

As part of the facilities available for the consumer to control expenditure, the Regulations empower the Authority to require a designated undertaking to provide a means for which consumers pay for telephony access and services on pre-payment terms.

This universal service is currently being offered by means of a pre-paid service called ‘Easyline’, allowing subscribers to pay in advance rather than pay rent or receive a bill for previous calls on a monthly basis. This scheme is aimed at allowing consumers to have more control on their telephone expenditure and plan the cost of their phone bill upfront.

The MCA has decided that a designated undertaking should continue to provide a ~~paid~~ service allowing subscribers to ~~pay~~ for calls as in the case of the ~~Easyline~~' service currently being provided by GO.

Decision 10

The designated undertaking shall provide a ~~payment~~ service which allows a subscriber to ~~pay~~ for its fixed line services rather than ~~pay~~ the rent or receive a ~~bill~~ for usage on a monthly basis

3.8 Quality of Service

In accordance with the Regulation, the designated undertaking/s which is/are responsible to provide specific universal services shall publish up-to-date information on their annual performance of the universal service²³

The decision entitled '*Measuring Authorised Operator Quality of Service Performance*' published by the MCA in 2005 establishes that the USO service provider of fixed telephony is required to publish Quality of Service (QoS) performance results on an annual basis. The MCA reserves the right to request information that may be required on a regular or on an *ad hoc* as the need arises.

Decision 11

The designated universal service undertaking/s providing access at a fixed location, directory enquiry services and directories; public payphones; is/are required to publish up-to-date information on its/their performance of the universal service in question as per the MCA's decision entitled '**Measuring Authorised Operator Quality of Service Performance**'²⁴ on an annual basis.

²³ SL399.28 Regulation 29 (1)

²⁴ https://www.mca.org.mt/sites/default/files/attachments/decisions/2012/qos_electronic_communications_june-05.pdf

4. DESIGNATION OF THE UNIVERSAL SERVICES

As established in the Regulations and stated earlier in this document, the Authority may designate different undertakings or sets of undertakings to provide the various elements of the universal services.

4.1 Designation Period

Designated undertakings are required to provide universal services until the MCA, it appropriate in accordance with its regulatory powers and responsibilities.

One of the respondents stated that it does not agree with an open-ended designation period and suggested that it would be reasonable if a review were to be carried out at least every three or four years. The MCA has taken this suggestion into consideration and revised its decision accordingly.

Decision 12

The undertaking designated to provide the universal service shall remain designated until the Authority deems it appropriate to review the decision according to its powers at law or at least within a time period which is notionally set at four years from the publication of this decision.

4.2 Process and Criteria for Designation

The designation methods should ensure that the USOs fulfilled in a cost effective manner, and the methods employed may be used as a means to determine the net costs of USOs.²⁵ As already mentioned earlier, the designation method is also required to be non-discriminatory whereby no undertaking is *a priori* excluded from being designated. The MCA retains the right to carry out due diligence exercises at its discretion in order to ensure that interested parties can be entrusted with the responsibility to provide the universal service.

As in the case of the 2010 Decision, the MCA is once again ensuring that requirements are being satisfied by allowing interested undertakings to submit an Expression of Interest for being designated with each component of the universal services.

²⁵ SL399.28 Regulation 22 (4)

The primary criteria the MCA shall use when assessing which undertaking shall be designated to provide all or part of the universal services are:

- Technical competence and expertise;
- Willingness to provide the service;
- Characteristics and conditions;
- Network Integrity and Service Continuity;
- Cost Effectiveness and Cost Efficiency.

4.2.1 Proven technical competence and expertise

As specified in the Regulation²⁶ the MCA is required to assess the ability of an undertaking to provide all or part of the universal service.

When assessing the technical competence and expertise of an undertaking to provide a universal service, the MCA shall take into consideration any past performance in providing the same universal service and the manner in which it was being provided. However, such an undertaking shall not be automatically designated to provide the universal service without giving the potential applicants an opportunity to do so. The MCA shall still assess any expression of interest by any entity interested in providing a universal service independently of its experience as long as the criteria for such a designation are met and satisfied.

4.2.2 Willingness to provide the service

The Universal Service Directive also specifies that when designating an undertaking, the Authority shall take into account its willingness to provide a particular element of the universal service.

As was the case in the past, the MCA needs to take into consideration the likelihood that no potential undertakings would express their interest in providing one or more of the universal services. If this had to be the case independent of willingness to provide the service, the MCA is still required to ensure that universal services are made available to the public. To this effect, in default of an expression of interest, the MCA shall be designating an undertaking to be responsible for providing each of the universal services. More details are given in Section 4.4 of this document.

²⁶ Directive 2002/22/EC, Recital 14

4.2.3 Characteristics and conditions

The MCA shall also assess the manner as to how an undertaking would fulfill the obligations of the universal service. A full description as to how the service would be provided should be included as part of the expression of interest submitted by interested entities. The MCA may discard an expression of interest that fails to include sufficient detail or understanding of how the universal service obligation will be fulfilled.

4.2.4 Network integrity and service continuity

When designating an undertaking, the Authority shall also ensure that the undertaking is committed to ascertain that the integrity of the network (when applicable) as well as service continuity and quality are maintained during the designation period.

4.2.5 Cost effectiveness and cost efficiency

Another criterion which shall be considered when adjudicating expressions of interest is the cost effectiveness and cost efficiency elements providing part or all of the universal services.²⁷ If deemed not affordable, the MCA is obliged to seek the provision of universal services at prices and terms and conditions that depart from normal commercial conditions to safeguard the interest of the general public.²⁸

The determining factors in assessing cost effectiveness and cost efficiency shall be

- the pricing of the service including any ancillary fees or charges;
- the extent to which the proposed pricing will cover the net cost of the service; and
- whether the service shall be provided without claims for funding.

The MCA will expect that as a minimum many expressions of interest received will clearly explain how better cost effectiveness and cost efficiency would be achieved as compared to the current provision of universal service.

²⁷ Universal Service Directive 2002/22/EC Article 4

²⁸ SL399.28, Regulation 21 (3)

Decision 13

The main criteria for assessing which undertaking should be designated to provide all or part of the universal service shall be:

- Proven technical competence and expertise;
- Willingness to provide the service;
- Characteristics and conditions;
- Network Integrity and Service Continuity;
- Cost Effectiveness and Cost Efficiency.

4.3 Call for Expressions of Interest

Parties interested in providing a universal service, or an element of the universal service, may submit an expression of interest formally in writing to the MCA by 22nd June 2015. This procedure would also be applicable should the currently designated undertaking providing the universal service be willing to continue being designated as such.

The MCA shall assess all expressions of interest in an efficient, objective, transparent and non discriminatory manner, based on the criteria identified earlier in Section 4.2. In addition, the MCA retains the right to carry out legal, commercial, and/or financial due diligence exercises at its discretion in order to ensure that interested parties can be entrusted with the responsibility to provide the universal service.

The assessment of Expressions of Interest will be carried out in the shortest timeframe possible but not to the detriment of the mentioned designation prerequisites.

Administrative Procedures to be followed when submitting an Expression of Interest

Enquiries

Any enquiries concerning the expression of interest should be made by noon CE 18th June 2015 and sent by email to uso.ecs@mca.org.mt. Both questions and answers will be published on MCA's website.

Submission of Proposals

Expressions of interest shall be received by the MCA by 05th 22nd June 2015. Any submissions received after this deadline will not be considered and therefore rejected at the discretion of the MCA, apart from submitting the Express of Interest as specified. Interested applicants may be requested to carry out oral presentations as part of the evaluation process.

Technical Proposals

The information which shall be submitted with the expression of interest shall include the following:

- Company background and history;
- Products and/or services offered;
- Information on the company individual involved in the provision of the universal service/s;
- Strategy on the provision of the universal service/s;
- Information on how the criteria for designation is being satisfied:
 - Proven technical competence and expertise;
 - Willingness to provide the service;
 - Characteristics and conditions;
 - Network Integrity and Service Continuity;
 - Cost Effectiveness and Cost Efficiency.
- Financial requirements on the provision of the universal service/s, if any.

The MCA reserves the right to request further information and evidence from interested undertakings to substantiate their expression of interest and to consider any expression of interest to be ineligible should it fail to provide the information and meet the above criteria adequately.

Expressions of Interest shall be addressed to:

Chief of Operations
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913

and titled as:

‘Expression of Interest for the Universal Service Obligations on Electronic Communication Services’

Following the deadline of the expression of interest, the MCA shall initiate an evaluation process and adopting an adjudication process which ensures a designated mechanism with an efficient, objective, transparent and non-discriminatory approach as required at law.

Once the MCA designates the undertaking/s to provide the components of the universal services, it shall update and publish the list in Annex 1 entitled *List of Designated Undertakings* found in this document

Decision 14

Entities willing to provide, or to carry on providing a universal service or part thereof, shall express their interest formally in writing to the Authority, including information on the designation criteria in accordance with the established administrative procedures to be followed when submitting an Expression of Interest by the 22nd June 2015.

4.4 Designations in Default of Expressions of Interest

One needs to take into consideration the likelihood that no undertaking might show interest to provide one or more of these universal services. To this effect, in order to fulfil the universal service requirements in the event that there is no expression of interest, the MCA shall designate an undertaking to provide the universal service in question. As specified earlier in this document, the designation of each universal service provider shall be treated in an individual manner.

Given that GO possesses the adequate technical abilities, experience and knowledge in providing each of the identified universal services, the MCA is proposing in the next section that GO would be designated to provide each of the universal services in default of an expression of interest, or if expressions of interest fail to meet and satisfy the required criteria.

One of the respondents to the consultation does not agree with GO's automatic designation in the absence of expressions of interest by other parties. It states that competition has developed significantly since the last USO decision, and that USOs can be delivered over different technologies, whether wireless or wireline. The MCA reiterates that since GO has been the only service provider designated to provide all the USOs for a number of years, no other provider possesses all of the criteria listed under section 4.2 to be considered for automatic designation in the absence of satisfactory expressions of interest.

4.4.1 Designation for the provision of access at a fixed location

The Authority is taking into consideration GO's widespread network coverage and its considerable experience in the provision of access and connection at a fixed location as well as functional Internet access. The MCA would designate GO to continue providing this universal service if no other entity expresses its interest to provide it, or in the case when expressions of interest fail to satisfy the criteria as defined in Section 4.2. As the designated universal service provider, GO has also been subject to annual Quality of Service (QoS) reporting as per the MCA's decision 'Measuring Authorised Operator Quality of Service Performance' of June 2005 which is based on the European Telecommunications Standards Institute's (ETSI) Quality of Service Parameters and also subject to obligations of network integrity and service continuity.

Decision 15

If no expressions of interest to provide access at a fixed location including functional Internet access is received by the set timeframe, or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

The designated undertaking providing access at a fixed location would be subject to Quality of Service reporting as required as per the decision '**Measuring Authorised Operator Quality of Service Performance' on an annual basis.**

4.4.2 Designation for the provision of a comprehensive electronic directory

Since 2006 GO has been providing a comprehensive directory in an electronic format accessible through its website. Currently there is an agreement in place through which other telephone operators make available to GO, as the universal service provider, their site's directory related information for this purpose. The MCA would designate GO to provide this universal service in default of an expressions of interest or in the case when expressions of interest fail to satisfy set criteria as defined in the Criteria for Designations at Section 4.2.

Decision 16

If no expression of interest is received by the set timeframe to provide a comprehensive electronic directory or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

4.4.3 Designation for the provision of public payphones

GO's public payphones are located throughout the Maltese islands in all localities. GO has been providing public payphones for a significant number of years, the MCA would designate GO to provide this universal service in default of any expressions of interest or in the case when expressions of interest fail to satisfy set criteria as defined in the 'Criteria for Designations' Section 4.2.

Decision 17

If no expression of interests received by the set timeframe to provide public payphones or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

4.4.4 Designation for the provision of specific measures for disabled users

Several measures for disabled users are currently available in the market and amongst the service providers currently providing these services. Considering GO's infrastructure, capacity and experience to provide services to disabled users as a universal service for a number of years, the MCA would designate GO, in default of an expression of interest or in the case submissions fail to satisfy set criteria as defined in the 'Criteria for Designations' Section 4.2, to provide universal service with respect to directory enquiry services for visually impaired users, also a 'Telecare' type of service.

Decision 18

If no expression of interests received by the set timeframe to provide directory enquiry services for visually impaired users or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

Decision 19

If no expression of interests received by the set timeframe to provide a 'Telecare' type of service or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

4.4.5 Designation for the provision of reduced tariffs

GO as the current undertaking providing this universal service obligation has the experience and ability to provide reduced tariff options to end-users. The MCA would thus designate GO in default of an expression of interest or in the case submissions fail to satisfy set criteria as defined in the 'Criteria for Designations' at Section 4.2, to provide reduced tariff options.

Decision 20

If no expression of interest is received by the set timeframe to provide reduced tariff options or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service obligation.

4.4.6 Designation for the provision of facilities to control expenditure

The MCA identified two types of universal services obligations to control expenditure, namely call barring and prepayment services. Both services have been provided by GO for a number of years and considering its experience in the provision of these services and network ability, the MCA designates GO in default of expression of interest or in the case that an expression of interest fails to satisfy set criteria as defined in the 'Criteria for Designations' Section 4.2.

Decision 21

If no expression of interest is received by the set timeframe to provide elective call barring or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

Decision 22

If no expression of interest is received by the set timeframe to provide pre-payment services or in the case that submissions fail to satisfy the required set criteria, GO would be automatically designated to provide this universal service.

5. COSTING & FINANCING OF UNIVERSAL SERVICE OBLIGATIONS

In accordance with the Regulations an undertaking designated to provide all or part of the universal services may seek to receive funds for the net costs incurred and representing an 'unfair burden' due to the obligations mentioned in Section 4 of this document. The undertaking may submit to the Authority a written request for funding with detailed information supporting its claim. This claim should be presented in a way that would enable the MCA to determine whether the provision of the universal service obligations has actually resulted in an unfair burden on the undertaking.²⁹

5.1 Time Period for Requesting Funds

In its consultation the MCA proposed to retain the current maximum timeframe of nine months following the end of the financial year when a designated undertaking is required to submit its written request to the Authority for the financing of the USO net costs.

One of the respondents stated that the nine month deadline is very tight and invited the MCA to consider extending this timeframe to eleven months. On the other hand the other respondent is of the opinion that the proposed nine month timeframe is excessive. From the experience it accumulated over the past years when assessing USO funding claims, the MCA acknowledges that the nine month timeframe can be restrictive in order for the claimant to be in position to submit all the necessary documentation. To this effect, the MCA has decided to extend this timeframe to eleven months.

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

Decision 23

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

5.2 Provision of Information in the Funding Request

An undertaking wishing to submit a request for funding shall provide the MCA with sufficient and detailed evidence to substantiate its claim that the provision of a universal service has resulted in a calculated financial unfair burden. When claiming for the net costs arising from the various components

²⁹ SL399.28, Regulation 30 (1), (2)

Of the universal services, any market benefits accrued by the undertaking shall also be taken into account. The requirements as set in Schedule Six of the Regulations are to be followed

The MCA reserves the right to reject any claim for funding which is inadequately substantiated, and to request any other information, or more detail than that submitted in the application by the undertaking if it deems it necessary to be in a position to reach its decision

Decision 24

The undertaking requesting funding shall provide the MCA with sufficient and detailed evidence supporting the claim that it has suffered an unfair burden in the provision of the universal service.

This evidence shall include a consideration of net costs and any market benefits accrued to the undertaking as a result of the universal service being provided as set in Schedule Six of the Regulations.

The burden of proof for each Universal Service shall rest with the said undertaking.

5.3 Funding Request Evaluation

Once a claim for USO funding with all the supporting evidence is received within the established timeframe as stipulated in Section 5.2 above, the MCA, or an appointed independent body³⁰ shall initiate an evaluation process to assess and determine whether the amount claimed is justified and was suffered in order to provide universal services outside normal commercial conditions. Any market benefits accrued by the designated undertaking shall also be included in the application specified in more detail in Part A of the Sixth schedule of the Regulations³¹ The results of the cost calculation and the conclusions of the audit shall be made publicly available.

The evaluation process shall consist of two phases namely:

- (1) A Reasonability Phase; and
- (2) A Calculation Phase.

³⁰ SL399.28 Regulation 30 (7)

³¹ SL399.28 Regulation 30 (4)

5.3.1 Reasonability phase

The objective of this phase is to analyse the validity of the reasoning that the designated undertaking has used to support its claim, and assesses the following elements:

- the grounds on which the claim/s funding are based;
- whether the claim/s is coherent with regulatory principles;
- the extent to which the claimed funding is attributed to universal service obligations; and
- the approach used to quantify the intangible benefit aspect.

5.3.2 Calculation Phase

This phase only applies, and to the extent that, the outcome of the Reasoning Phase deems the reasons behind the funding claim as valid.

The Calculation Phase shall include an auditing and a verification exercise on the various calculations used in the claim submitted by the designated undertaking. This would include a calculation exercise in order to establish that the inputs and workings used to quantify the net costs to provide the universal service in question are accurate.

The net cost of the USO is calculated as the difference between the net cost a designated undertaking incurred to provide a service with the universal service obligation, as opposed to operating the service without the universal service obligation. Any intangible benefits provided by the designated undertaking shall also be taken into account³²

5.4 Source of funding

If, following the evaluation process, a designated undertaking is found to have suffered an unfair burden, the source of funding to compensate for the net cost shall be decided on a case by case basis, depending on the nature of the Universal Service in question and circumstances

As established in the Regulation the source of USO funding shall be one, or a combination, of the following options:

- from public funds with the approval of the government; and/or³²

³² SL399.28, Regulation Part A of Sixth Schedule

- by means of a sharing mechanism between providers of electronic communications networks and services³³.

A sharing mechanism, if required, should be set up on the basis of transparency, least market distortion, non-discrimination and proportionality, and be subject to the principles of Part B of the Sixth schedule of the Regulations

One of the respondents to the consultation stated that it supports that the funding of USO are sourced from public funds since it strongly disagrees with any cost sharing mechanism. If such a mechanism is considered for future applications, it is necessary that companies are given the opportunity to plan ahead in terms of annual budgets and expenses. Therefore mechanisms should ideally not be implemented retrospectively but on a forward looking basis. This respondent also stated that no universal service obligations should be in place given the increase penetration and enhanced coverage of fixed, mobile and wireless communications in Malta.

³³ SL399.28, Regulation 31 (1)

6. CONCLUSION

The MCA shall monitor the provision of all aspects of the universal service in order to ensure that the services listed in this decision forming a part of the universal service are made available to all end-users. A review of this decision will take place when the Authority deems it appropriate according to its powers at law or at least within a time period which is notionally set at four years from the publication of this decision.

The revised universal service obligations shall come into effect as from 1st July 2015.

ANNEX 1

Updated Universal Service designated undertakings

(based on the decisions found in this document)

PROVISION OF ACCESS AT A FIXED LOCATION

GO plc

PROVISION OF DIRECTORY ENQUIRY SERVICES

Electronic Comprehensive Directory

GO plc

PROVISION OF PUBLIC PAYPHONES

GO plc

PROVISION OF SPECIFIC MEASURES FOR DISABLED USERS

Directory Enquiry Services free of charge for visually impaired persons

GO plc

Provision for a 'Telecare' type of service

GO plc

PROVISION OF REDUCED TARIFF OPTIONS

GO plc

ENSURING USERS CAN CONTROL EXPENDITURE

Selective Call Barring

GO plc

Prepaid Service

GO plc

QUALITY OF SERVICE REPORT

GO plc

Updated May 2015