



## **VIRTUAL UNBUNDLED ACCESS TO FIBRE-TO-THE-HOME: Enhancing the Non-Discrimination Obligation**

**Response to Consultation and Decision**

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## EXECUTIVE SUMMARY

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In February 2016, the Malta Communications Authority (hereafter 'MCA') published a Decision entitled 'Virtual Unbundled Access to Fibre-to-the-Home - Response to Consultation and Decision' (hereafter 'VULA Decision'). In that Decision, the MCA had stated that it intended to issue a further decision aimed at enhancing the VULA remedy through the development of a series of metrics aimed at safeguarding an Other Alternative Operator (hereafter 'OAO') against potentially discriminatory behaviour.

In January 2017, the MCA published a proposed decision for public consultation entitled 'Virtual Unbundled Access to Fibre-to-the-Home: Enhancing the Non-Discrimination Obligation'<sup>1</sup> (hereafter 'VULA-KPI Consultation'). The public consultation addressed a number of identified Key Performance Indicators (hereafter 'KPIs') that are aimed to monitor GO's own Fibre-to-the-Home (hereafter 'FTTH') rollout metrics, as well as those related to VULA services provided to the OAO. These KPIs would assist in monitoring whether a number of service level agreements (hereafter 'SLAs') and service level guarantees (hereafter 'SLGs') were being met, and whether they could potentially be revised.

The consultation period ran from the 27<sup>th</sup> January 2017 to 28<sup>th</sup> February 2017, during which two operators GO plc (hereafter 'GO') and Vodafone Malta Ltd (hereafter 'Vodafone') submitted their formal feedback.

Following a joint announcement released on 24<sup>th</sup> May 2017 that Melita Ltd and Vodafone planned to combine into a new communications provider, the MCA had considered that such a concentration would represent a significant change in market reality, and accordingly it refrained from proceeding with a decision in view that the proposed concentration was being reviewed by the Malta Competition and Consumer Affairs Authority ('MCCAA'). On 8<sup>th</sup> December 2017 the parties issued a joint announcement stating that plans for the merger were being terminated as they were unable to satisfy the requirements to obtain approval from the MCCAA for the transaction.

After the termination of the merger plans, Vodafone informed the MCA that it was seeking to conclude an agreement for VULA with GO. Vodafone and GO entered into discussions based on the Reference Unbundling Offer and, after facilitation by the MCA to agree on specific terms, the agreement was signed during the second week of October 2018.

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<sup>1</sup> <https://www.mca.org.mt/consultations-decisions/virtual-unbundled-access-fibre-home-enhancing-non-discrimination-obligation>

During the intervening timeframe, the MCA sought clarifications and additional information related to the subject. This report on consultation and decision now contains a summary of the feedback received from respondents, the MCA's position in relation to those submissions and subsequently, the MCA's final Decision.

In summary, the MCA is:

- Laying out a number of KPI requirements to be monitored and submitted to the MCA on a quarterly basis, as well as
- Updating a set of SLGs which will apply to the corresponding SLAs.

Pursuant to Regulation 7 of the Framework Directive, on 9<sup>th</sup> November 2018 the MCA notified its draft decision to the EU Commission. On 4<sup>th</sup> December 2018, the Commission issued its Decision stating that it had no comments to make and that the MCA may adopt the measure.

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## 1. BACKGROUND

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In April 2015, the MCA issued a public consultation on the Reference Offer that GO is obliged to implement in order to provide virtual access to its FTTH network. The public consultation addressed various technical and economic specifications to ensure equivalence of access, including, amongst other matters, the methodology for the setting of wholesale access charges. In February 2016, the MCA published its VULA Decision wherein the MCA mandated on GO a number of technical and economic requirements with a view to ensuring that access seekers are in a position to replicate GO retail offerings in a non-discriminatory manner. Through the VULA Decision, the MCA also directed GO to publish a Reference Offer incorporating the latest amendments spelt out in the same Decision.

Furthermore, in the VULA Decision specifically under Section 8 of the same Decision, the MCA expressed its intention to issue a further consultation aimed at enhancing and maintaining the implementation of the VULA remedy. In January 2017, the MCA issued a public consultation regarding the KPIs that GO has to report to the MCA. Furthermore, a number of SLGs in relation to the respective SLAs were proposed, which the operators would be required to follow for a smooth process between GO and the OAO.

The consultation period closed on 28<sup>th</sup> February 2017 and the MCA received feedback from two operators, GO and Vodafone. The Authority wishes to thank both companies for the interest shown in submitting their feedback.

The MCA refrained from proceeding with a decision in view that the MCCA was evaluating a proposed concentration by Melita and Vodafone. On 8<sup>th</sup> December 2017 the two companies issued a joint announcement that plans for the merger were being terminated.

After the termination of the merger plans, Vodafone and GO entered into discussions for VULA based on the Reference Unbundling Offer and, after facilitation by the MCA to agree on specific terms, an agreement was signed by the two operators-during the second week of October 2018.

### ***1.2 Structure of the Document***

The document is structured as follows, and incorporates the respondents' feedback as well as the MCA's decisions:

- Section 2 provides the feedback and the MCA decision in relation to the KPIs;
- Section 3 provides the feedback and the MCA decision in relation to the SLAs and SLGs ;
- Section 4 provides the feedback and the MCA decision in relation to the reporting timelines; and
- Section 5 concludes with a summary of the way forward.

## 2. KEY PERFORMANCE INDICATORS

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As the term implies, Key Performance Indicators ('KPIs') are measurement tools aimed at gauging the performance of a particular process.

In this particular case, the MCA had proposed to apply such KPIs to gauge the performance of GO's own retail arm for FTTH, as well as the performance of its access obligation in respect to the wholesale VULA service provisioning cycle. This is of relevance in the context of the Equivalence of Output ('EoO') concept adopted by the MCA in relation to the VULA remedy as stipulated in the VULA Decision. As a matter of fact, the MCA - under Section 5 of the above-mentioned VULA Decision - has argued in favour of implementing an EoO approach to the extent that such an approach be accompanied by the necessary safeguards in order to fully ensure that the non-discrimination obligation imposed upon GO is fully adhered to. KPIs and SLAs/SLGs are in fact the main principle mechanisms by which the adherence to the non-discrimination obligation is ensured.

### **2.0.1 Response from the Operators**

Vodafone, in its response, reiterated earlier concerns regarding the VULA Decision since the EoO approach was adopted. Vodafone added that accordingly an effective system of checks and balances is pivotal.

GO raised a number of points that regard the various KPIs, and identified two major concerns. The first deals with the rollout of FTTH, and the second focused on non-discrimination. According to GO, from the rollout perspective, the monitoring of these KPIs is a significant burden since the work has to be done manually. Regarding the non-discrimination aspect, GO mentioned a number of points namely that:

- initially, the figures reported for each KPI will be very low and unrepresentative;
- no timeframe was provided for the evaluation of non-discrimination;
- It queried whether the penalty incurred is subject to a quarterly or annual basis;
- there is a high degree of bureaucratic work to ensure compliance with a non-discrimination obligation.

### **2.0.2 MCA's Response and Decision**

Regarding the EoO point raised by Vodafone, the MCA clarifies that this approach was addressed in the VULA Decision. Although this matter was not within the scope of the current consultation and proposed decision, the MCA maintains that the alternative EoI approach would not only be disproportionate on the SMP operator, but it would also be too cumbersome for the local market. The implementation of a robust KPI/SLA/SLG framework through the current decision is precisely to safeguard that the end-result ensures non-discrimination between the SMP operator and an OAO. In

order to reaffirm that an effective system of checks and balances will be indeed implemented, for the avoidance of doubt the MCA is therefore retaining the right to investigate or audit any KPIs provided as the need arises. At the same time, the MCA has to point out that the provision of reliable and good-quality information is shared by all operators, hence OAOs will also be obliged to provide such information to the MCA upon demand.

With regard to GO's first point of feedback, the MCA sees no inverse relation between the resources required for the rollout of FTTH and the submission of the requested indicators. GO did not demonstrate how such a relation could exist, and given that this Decision kicks off with VULA becoming active, then GO is able to pre-plan the resources allocation necessary for the implementation of this decision in good time. In the same context, GO has sufficient opportunity to set an automatic process, should it believe this to be more efficient, in order to extract the required information accordingly.

Regarding the point of non-discrimination timeframe, the MCA points out that the SLA/Gs given to OAOs will include pre-established binding timeframes. In other words, the penalties incurred by GO are subject to the SLAs/SLGs defined in the VULA offer and this decision respectively. Furthermore, the MCA will monitor the ongoing performance as reported by GO in its KPIs as against the SLA/Gs which are included in the VULA product, and if necessary will take action to update the applicable SLA/Gs following appropriate consultation as may be required.

#### ***Decision 1***

- **GO shall report to the MCA the specified KPIs on a regular basis as established in this Decision Notice.**
- **The MCA reserves the right for systematic, or case-by-case, investigation, or audit, should the need arise.**
- **OAOs also shall ensure that they are capable of reporting equivalent information upon demand by the MCA.**

### ***2.1 Order Validation and Installation of VULA FTTP***

The initial process entails the evaluation of a request and the setup of the connection for the customer. As part of this process, eight (8) KPIs were proposed in the consultation, in order to cover salient aspects of the provisioning process underlying the VULA wholesale access products.

The objective of the proposed list of KPIs was to measure GO's performance in relation to the requests from an OAO when compared to its performance in relation to GO's retail arm. This measurement thus allows the gauging of GO's non-discrimination obligation between its retail arm and the OAO's requests.

### 2.1.1 Response from the Operators

Vodafone requested various further mapping for the rejections indicator ('KI05'). Vodafone also requested that two new KPIs are added: one that measures the timeframe between GO's validation of the new request and the appointment with the end customer; and the other KPI focused on further insight about why the OAO's client abandoned the request and the relative charges imposed on the OAO. Vodafone also stressed the obligation to ensure that GO's downstream arm is not given preferential treatment over an OAO in terms of installation.

### 2.1.2 MCA's Response and Decision

The MCA acknowledges the first point raised by Vodafone for additional mapping of the indicator KI05, but considers that at this early stage of VULA implementation, there is currently no additional need to define further detail regarding the rejections in KI05. This particular KPI will already capture the top five rejection reasons and hence they will already reflect the major reasons encountered. The definition and categorisation of these rejections is required to be discussed and agreed between GO and the OAO. For the avoidance of doubt, the MCA expects GO's reporting to provide a clear and relevant picture, and it reserves the right to lay out additional specifications following due process in order to reach this objective.

The MCA values the new timeframe KPI (timeframe between validation and appointments) that Vodafone proposed and agrees to add this new KPI (as 'KI06'). Regarding the other new KPI proposed by Vodafone, which is aimed to capture why the OAO's client abandoned the request, the MCA considers that it is the OAO who can and should collect such information, if the OAO considers this necessary. In case of any issues encountered with requests abandoned by OAO clients, the matter can be raised with the MCA to verify whether further follow-up is appropriate.

In order to further strengthen monitoring, the MCA has also decided to add a new indicator to measure the total time to set a connection, which will provide the MCA with an overall measure relevant to its future monitoring.

KPIs - ORDER VALIDATION and INSTALLATION				
ID	Key Performance Indicators	Process Steps <sup>2</sup>	Field Value	Definition
KI01	Number of Requests Received Fibre Connected New Homes Passed Semi Built	Step 2	Number of Cases  <i>Count</i> <i>Count</i> <i>Count</i>	The number of requests received

<sup>2</sup> As per Section 4 & Appendix 1 - Annex E2 of GO's RO.



KI02	Time for GO's response	Step 2 to Step 4/5	Average  <i>Time</i>	The average time taken by GO to send feedback whether a request is accepted or not.
KI03	Number of Requests exceeding the SLA value wrt KI02	Step 2 to Step 4/5	<i>Count</i>	Number of requests that exceed the 1 day SLA.
KI04	Number of Requests Rejected Fibre Connected New Homes Passed Semi built	Step 4	Number of Cases <i>Count</i> <i>Count</i> <i>Count</i>	The number of requests rejected by GO
KI05	Top 5 Reasons why Request was Rejected  Reason 1 Reason 2 Reason 3 Reason 4 Reason 5	Step 4	Number of Cases  <i>Count</i> <i>Count</i> <i>Count</i> <i>Count</i> <i>Count</i>	The top 5 reasons of rejections and the number of cases falling under each.
KI06	Period of time between GO's validation and appointment with end user Fibre Connected New Home Passed Semi Built	Step 5 to Step 6	Average  <i>Time</i> <i>Time</i> <i>Time</i>	The average time required from when the new request is validated to when GO set the appointment with the end user.
KI07	Period of time between Acceptance and Connection Fibre Connected New Home Passed Semi Built	Step 7 to Step 9	Average  <i>Time</i> <i>Time</i> <i>Time</i>	The average time required from the request initiation to the final connection (equivalent to the completion of installation works).
KI08	Number of cases exceeding the SLA value wrt KI06 Fibre Connected New Home Passed Semi Built	Step 7 to Step 9	Number of Cases  <i>Count</i> <i>Count</i> <i>Count</i>	The number of cases that fall within the various time brackets mentioned in KI05.
KI09	Total number of Successfully Completed Requests Fibre Connected New homes Passed Semi built	Step 9	Number of Cases  <i>Count</i> <i>Count</i> <i>Count</i>	The final total successful connections completed

K110	Period of time between OAO's application and connection	Step 2 to Step 9	Average	The average time required from when the OAO fills the application with GO to the final connection at the end-user.
	Fibre Connected		<i>Time</i>	
	New Home Passed		<i>Time</i>	
	Semi Built		<i>Time</i>	

Table 1: KPIs on the Order Validation and Installation of VULA FTTP Connection

### Decision 2

The above table shall be the KPIs for the Order Validation and Installation phase<sup>3</sup>.

## 2.2 Termination of a VULA FTTP Connection

The second major process deals with the termination of a VULA FTTP Connection. To this effect, the Reference Offer (hereafter 'RUO') within Annex E2 takes into consideration the process that GO has to follow when the OAO raises a request for termination. Hence, a termination request of a VULA FTTP connection will set in motion a process for which the MCA had proposed a number of KPIs.

### 2.2.1 Response from the Operators

Vodafone raised a number of aspects regarding the Termination KPIs that were proposed by the MCA. Vodafone requested that a new KPI is added, that would monitor the accuracy of the charges raised by GO. For the KPI - KT02, Vodafone proposed that it is ideal to include also the 'Worst Case Scenario' since this will capture the whole spectrum of the cases, and hence it would be possible to note the longest time that GO took to evaluate a request and provide feedback. For the same indicator KT02, Vodafone mentioned that the 'Worst Case Scenario' is required so that it captures those instances when a request is submitted to GO prior the 30 days' notice period.

### 2.2.2 MCA's Response and Decision

The MCA took note of the feedback provided by Vodafone that the accuracy of charges should be reported by GO, however the MCA believes that it is the OAO who can and should keep track of such information, if the OAO considers this to be necessary. In case of any charging accuracy dispute not settled in line with the provisions in the VULA agreement, or arising on a repeated basis, then the matter can be raised with the MCA.

<sup>3</sup> Compared to the proposed decision, the MCA has added a new KPI that measures the timeframe between the request validation and the appointment with the end user.

Regarding the addition of the ‘Worst Case Scenario’ measurement to indicator KT02, the MCA at this stage does not consider such an addition to be required, particularly since the average time by itself should give an indication whether the response differs between GO’s retail arm and the VULA service. The MCA, points out that the indicator KT02 defines two timeframes which are to be reported. The difference between these two reported timeframes should reflect the time taken by GO to validate the request and inform the OAO (i.e. from request received to SLA initiation).

KPIs – TERMINATION of a VULA FTTP CONNECTION				
ID	Key Performance Indicator	Process Steps <sup>4</sup>	Field Value	Definitions
KT01	Number of Requests Received	Step 1	<i>Count</i>	The number of requests received.
KT02	Time required between:  Request received and Termination	Step 1 – Step 7	<i>Average Time</i>	The average time required for GO to process request for termination and inform customer**.
	SLA initiation to Termination	Step 3 – Step 7	<i>Time</i>	
KT03	Number of Requests Rejected	Step 8	<i>Count</i>	The number of requests rejected by GO.
KT04	Time required to inform customer that Request is being Rejected	Step 2 / Step 8	<i>Average Time</i>	The average time required for GO to send feedback to customer that request is rejected.
KT05	Top 5 Reasons why Request was Rejected	Step 8	Number of Cases	To provide the top 5 reasons of rejects. For each reject, to capture the number of cases..
	Reason 1		<i>Count</i>	
	Reason 2		<i>Count</i>	
	Reason 3		<i>Count</i>	
	Reason 4		<i>Count</i>	
Reason 5	<i>Count</i>			

\*\* Customer implies the OAO and GO Retail

Table 2: KPIs on the Termination of a VULA FTTP Connection

<sup>4</sup> As per Section 5 & Appendix 2 - Annex E2 of GO’s RO.

### **Decision 3**

**The above table shall be the KPIs for the Termination phase.**

### **2.3 *Fault Reporting and Fault Resolution of a service falling under the VULA provisioning***

An intrinsic aspect of any service provisioning, especially in the context of the VULA remedy, is to gauge GO's performance in relation to fault reporting and resolution. In other words, gauging the number of fault reports as well as the timeframe in which these faults have been solved, are key to monitoring that the non-discrimination obligation is fully respected. Similar to the other processes, a number of KPIs were proposed to be able to monitor the fault process and any issues in relation thereto.

It is pertinent to note that for a fault to be deemed to fall within GO's infrastructure, and therefore falls within the remit of GO to resolve when this requires the direct intervention from GO. Any fault residing at the end customer and which can be resolved by the customer directly, is not considered as falling within GO's infrastructure. Such a demarcation applies to faults reported by the OAO and GO retail alike.

#### **2.3.1 *Response from the Operators***

Vodafone mentioned that further detailed fault information should be collected, and that this should reflect fault information by locality and state whether the fault is a new one or a repeated one. Vodafone stresses that the obligation to ensure that GO's downstream arm is not given preferential treatment over an OAO in terms of faults resolution.

#### **2.3.2 *MCA's Response and Decision***

The MCA highlights that the purpose of setting KPIs for the number, type, and resolution timeframe of faults, is to detect and address potential non-discriminatory behaviour. The MCA does not consider that at this stage, in addition to the proposed KPIs, obtaining detailed fault information by locality, and whether new, assists in this objective. Operational information at a localised/individual level can be kept by the OAO, and when there are issues, this information can be shared with the MCA to verify whether further follow-up is appropriate.

In order to further strengthen monitoring, the MCA has also decided to add a new indicator to measure the total time to repair faults, which will provide the MCA with an overall measure relevant to its future monitoring.

KPIs – FAULT of a VULA FTTP CONNECTION				
ID	Key Performance Indicator	Process Steps <sup>5</sup>	Field Value	Definitions
KF01	Number of Faults Received	Step 2	<i>Count</i>	The number of faults reported.
KF02	Number of Faults reported which fall within GO's infrastructure	Step 4	<i>Count</i>	Number of faults reported which fall within GO's infrastructure.
KF03	Top 5 Fault types	Step 6	Number of Cases	To provide the top 5 reasons of fault type. For each fault type to capture the number of cases.
	Reason 1		<i>Count</i>	
	Reason 2		<i>Count</i>	
	Reason 3		<i>Count</i>	
	Reason 4		<i>Count</i>	
KF04	% of GO's Infrastructure faults repaired in:	Step 6 / 7 to Step 9*	% Share	To measure the proportion of cases falling within each of the time brackets.
	2 Working Days		%	
	5 Working Days		%	
	6+ Working Days		%	
KF05	The period required to handle a fault:	Step 2 to Step 11	Average	The average time required to handle a fault that is the time from when the end-user reports the fault and is sorted.
	Fibre Connected		<i>Time</i>	
	New Homes Passed		<i>Time</i>	
	Semi Built		<i>Time</i>	

\*This does not include Step 8 which covers the time required for the OAO's feedback.

Table 3: Key Performance Indicators on the Fault Reporting and Fault Resolution of a VULA FTTP Connection

#### Decision 4

The above table shall be the KPIs for Faults Reporting and Resolution.

<sup>5</sup> As per Section 6 & Appendix 3 - Annex E2 of GO's RO.

## 2.4 Other services provided under the VULA offer

### 2.4.1 Response from the Operators

As already mentioned above, in its submission, Vodafone stresses the obligation to ensure that GO's downstream arm is not given preferential treatment over an OAO. One of the matters that Vodafone indicated a concern was in relation to the level of handover point service availability.

In response to follow-up queries made to GO by the MCA, GO submitted that it considered the guarantee of 99.4% per month to already be very high, and that the OAO is free to alternatively provide its own backhaul, hence it was not aware of a problem in this regard, nor could GO understand why such availability should be adjusted.

### 2.4.2 MCA's Response and Decision

The MCA firstly notes that the Handover point was addressed in the previous VULA Decision. Additionally, Vodafone has clarified in recent interactions involving the MCA and GO shortly before the signature of the VULA agreement, that it does intend to use its own backhaul, and will use GO's collocation service to patch into GO's infrastructure.

After considering this matter, as reiterated in the consultation and in Section 3 below, the MCA does not believe that currently there are sufficient reasons for the backhaul SLA/SLG to be revised. Nonetheless, it appreciates that the use of GO's collocation service still infers a dependency on GO, albeit reduced, and that it would be difficult to assess non-discrimination for this handover segment unless a KPI is established.

Accordingly, the MCA is defining a new KPI specifically to measure total operator service uptime. For the avoidance of doubt, since GO cannot be held responsible for any total service downtime which originates exclusively from Vodafone's infrastructure, any such interruption would not be considered as downtime attributable to GO.

KPI – HANDOVER POINT			
ID	Key Performance Indicator	Field Value	Definition
KH01	The average FTTH total operator service uptime during the time period reported	% Average Uptime	The average time that the FTTH service is operational.

Table 4: Key Performance Indicator on the uptime of the FTTH network.

**The above table shall be the KPI for FTTH total service uptime.**

## **2.5 KPIs Going Forward**

The above KPIs are meant to set the context for the collection and measurement of GO's performance of its obligations arising from the VULA Reference Offer in order to ensure compliance to its non-discrimination obligations. In its consultation paper, the MCA had stated that in no way were the proposed KPIs meant to be static. It is the intention of the MCA to analyse the data submitted and propose changes and / or improvements as deemed necessary for the continuous compliance of GO's non-discrimination obligation. Besides, the MCA shall also reserve the right to request further information on specific metrics if the data submitted in relation thereto is such that further analysis is warranted to establish, resolve or address certain issues that may be encountered.

### 3. SERVICE LEVEL AGREEMENT & SERVICE LEVEL GUARANTEES

Along with the KPIs identified under Section 2, it is also important to set a number of SLAs and of SLGs which will further complement GO's measurement of its performance and quality in its delivery of the access obligations across the various processes. In fact, the concept of the SLAs is similar to a contract obligation between a service provider and the customer whereby the level of service expected from the service provider is defined. In this particular case, the SLAs are output-based as these stipulate the time within which the service is to be delivered. It is pertinent to note that the RUO currently in force already contemplates a number of SLAs, which are being reproduced in this Decision for the purpose of defining a corresponding set of SLGs.

In relation to the SLAs, the MCA is accordingly establishing the SLGs that GO is required to adhere to. In fact, SLGs are normally considered an integral part of the SLAs since these guarantees are a form of compensation that the counterpart is entitled to if the service delivery fails the established SLAs. For the avoidance of doubt, the SLAs and SLGs being covered in this document are only applicable to the OAO being the party to a VULA agreement.

Hence the purpose of SLGs is to incentivise GO to honour the obligations arising from the SLAs. In other words, SLGs will further enhance the requirement for the services provided under the VULA remedy to be delivered on time, failing which render will GO liable to a series of penalties.

Save for some exceptions, the SLGs applied for the various SLAs are based on the following methodology:

- A daily (working day) penalty of 10% of the relative service charge; and
- A penalty capping of up to the full amount of the relative service charge.

#### **3.1 VULA FTTP Connection Order Validation and Installation**

For this process, two SLAs were identified to measure the performance of the following processes:

- the maximum number of working days for GO to inform the OAO or GO Retail; and
- the maximum number of working days to setup and test the connection.

Given that there are different types of VULA FTTP connections, this in itself impacts the maximum number of working days considered for each type. For example if a customer is already subscribed to an existing FTTH service, then the maximum number of working days currently allowed in Annex E3 of the RUO is twelve (12). In instances where the customer is in a 'Homes Passed' area but is new to FTTH, then the maximum number of working days currently allowed is of seventeen working days (17).

It is pertinent to note that the above SLAs – as already enforceable under Annex E3 of the RUO – stipulate a daily cap of 15 OAO orders for the first year of the Agreement between GO and the Access seeker.



In its consultation the MCA had proposed an SLG for each corresponding SLA.

### **3.1.1 Response from the Operators**

Vodafone, as part of its feedback, raised a number of aspects, the first one being on the “complexity” of claiming under an SLA whereby it maintained that SLGs should be paid automatically to the OAO; and another one being on the fifteen (15) daily cap which according to Vodafone is very restrictive. Another aspect that Vodafone raised is regarding the number of days required to set a connection.

In response to follow-up queries made to GO by the MCA, GO referred that the figures in the RUO were estimates set at a time when experience on installations were limited. GO added that it was now in a better position to measure actual levels, and it provided the MCA with actual performance summaries for installations.

### **3.1.2 MCA’s Response and Decision**

The penalty invoicing is between the OAO and GO, and it is normal commercial practice that the party who believes that it is entitled to a claim who should raise an invoice. Accordingly, it is in the OAO’s interest to see that it implements and maintains an efficient system to monitor its own submitted orders and to submit respective claims under the SLA/SLG setup. At this stage, the MCA does not consider it necessary to deviate from this practice, however it reserves the right to re-examine this matter, taking also into account relevant developments that may occur.

Regarding the fifteen (15) daily cap comment, the MCA refers to the VULA Decision where this capping was included. This daily cap figure compares very well to the current GO capability to install new FTTH connections, which for Q2/2018 stood at an average of eighteen (18) per day<sup>6</sup>. The MCA also brings to Vodafone’s attention that, as part of the KPIs, in KI01 GO will report the take-up of the retail arm and OAO separately, so any significant differences will be identified for further review.

With regard to the actual timeframes themselves, the MCA considered Vodafone’s submission on the length of the timeframes, as well as the new information provided by GO after the MCA’s follow-up. The MCA accordingly is taking cognisance of the new information, and considering that the intention of the SLAs is to safeguard against potential non-discriminatory behaviour, is mandating some changes which are reflected in the below table.

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<sup>6</sup> The number of installed FTTH connections is released regularly in the MCA’s statistical publications at <https://www.mca.org.mt/articles/key-market-indicators-electronic-communications-and-post-q1-2014-q2-2018>

SLA & SLG - ORDER VALIDATION and INSTALLATION				
ID	Service Level Agreement	Process Steps <sup>7</sup>	Maximum Working Days <sup>8</sup>	Service Level Guarantee
SI01	Time between Request and OAO informed of status update	Step 2 to Step 4 / 5	1	A daily penalty of 10% of the installation charge capped up to the full installation charge.
SI02	Time between SLA and Completion of Installation Works Fibre Connected New Home Passed Semi Built	Step 7 to Step 9 <sup>9</sup>	12 13 13 (excluding OAO intervention)	

Table 5: SLAs and SLGs on the VULA FTTP Connection Order Validation and Installation

#### Decision 6

The above table shall be the SLAs and SLGs for Order Validation and Installation.

### 3.2 Termination of a VULA FTTP Connection

For the termination process, the RUO makes provisions to the effect that the OAO shall give at least thirty (30) days prior notice to GO.

Section 5 of Annex E2 of the RUO sets out a termination process that will be triggered by GO upon receipt of a request for termination. In order to ensure that the termination process is duly concluded within the thirty day notice period, the MCA had proposed two SLAs with a view to also gauge the suspended time for when action from the OAO is required. In this particular case, the MCA had proposed that the SLGs will not be defined by reference to penalties that GO will have to suffer, but by specifying a cut-off deadline beyond which GO would not be able to make further charges.

In view that the Process in Section 5 of Annex E2 is such that GO invoices the OAO up to the date when the OAO returns the ONT to GO or up to the termination date stipulated on the Termination form,

<sup>7</sup> As per Section 4 & Appendix 1 - Annex E2 of GO's RO.

<sup>8</sup> As allowed in Annex E3 of the RO.

whichever is relevant, the MCA finds no value in introducing an SLA from Step 7 onwards. In the case of the ONT not needing to be returned, it is in the interest of GO to de-provision the requested VULA FTTP Connection and issue an invoice to the OAO at the earliest possible time. If the ONT does not need to be returned, it is in the interest of the OAO to forward to GO the ONT, by the end of the 30 days period (or 10 days after it receives the request to return it, whichever is the later) in order to avoid further charges from GO.

### ***3.2.1 Response from the Operators***

Vodafone stated that the current text does not take into consideration if a customer wants to terminate the service on a pre-determined date which is more than 30 days in the future, and hence proposed that a change in text is required to cater for such requests.

Vodafone also maintained that termination and cessation of charges should not involve return of the ONT but should be carried out remotely.

### ***3.2.2 MCA's Response and Decision***

The MCA notes that although Vodafone claimed that only a “minor modification” is required to implement its proposal for a pre-determined date, it provided no proposed revision to be reviewed by the MCA for possible consideration. Notwithstanding, for those instances that a client requires to pre-notify the termination on a date which is more than 30 days in the future, the OAO has to update its own systems to keep such a request on hold until the due date approaches. Accordingly, it is the responsibility of the OAO to also keep the wholesale deactivation request on-hold, and as the 30<sup>th</sup> day preceding the requested date approaches, the OAO will inform GO of this termination.

In relation to Vodafone's position that termination and cessation of charges should not involve an obligation to return the ONT, the MCA notes that GO specifies the same obligation on its retail clients, hence the wholesale terms appear to respect the principle of non-discrimination. Furthermore, the MCA notes that the cap listed in Section 2 of Annex D to the RUO also tallies with the respective charge specified by GO in the retail Terms and Conditions. Nonetheless, the MCA will maintain this aspect under review, should the need arise.

SLAs & SLGs – TERMINATION of a CONNECTION				
ID	Service Level Agreement	Process Steps <sup>9</sup>	Maximum Working Days	Service Level Guarantee
ST01	Time between Request and GO informs OAO	Step 1 - 3 / 8	3	GO is not entitled to make further charges beyond the 30-day notice period, unless 30 days have expired and the OAO has taken longer than 10 working days to return the ONT from the time of the instructions to do so from GO.
ST02	Time between Request and GO informs OAO regarding any action required by OAO on ONT	Step 3 - 4 / 5	Up to 10 working days in advance of the expiry of the 30 days' notice period	
ST03	Time between Restart SLA and GO de-provisions the requested VULA FTTP Connection and informs OAO	Step 6 - 7	not relevant	

Table 6: SLAs and SLG on the Termination of a VULA FTTP Connection

#### **Decision 7**

**The above table shall be the SLAs and SLG for the Termination phase.**

### **3.3 Fault Reporting and Fault Resolution of a VULA FTTP Connection**

For the fault process the RUO incorporates a SLA which specifies that fault reports will be completed within five (5) working days from when the OAO reports such fault to GO. This in itself is based on a condition that the fault requires GO's direct intervention, as the OAO will report the fault to GO after having concluded that it cannot be resolved at his end nor by the end retail client. Another equally important SLA is to gauge GO's timely feedback in relation to faults reported by a client to the extent of advising the latter whether the fault lies within GO's infrastructure or else resides with the client and therefore can be resolved directly by the client.

#### **3.3.1 Response from the Operators**

Both GO and Vodafone provided feedback for the fault SLA proposed by the MCA. GO referred to the fact that the penalty proposed did not tally with the GO Retail Promise. This aspect was also mentioned by Vodafone, but Vodafone also claimed that the number of working days for fault resolution in the VULA RUO differ from those of GO's Retail Arm Promise.

<sup>9</sup> As per Section 5 & Appendix 2 - Annex E2 of GO's RO.

### 3.3.2 MCA's Response and Decision

The MCA took on board both GO's and Vodafone's comment on the penalty charge which will accordingly be revised to tally with GO's Retail Promise<sup>10</sup>. Regarding Vodafone's submission that the fault repair timeframe in the RUO differs from GO's Retail Arm Promise, the MCA clarifies that the five (5) working days are split as follows:

- 1 working day for GO to check the infrastructure
- 4 working days for GO to repair the fault

Hence, the four days to repair the fault do tally with GO's Retail Promise. At this stage it appears reasonable to allow one extra day for GO to review the infrastructure in order to identify whether the fault is at their end or not. From the retail perspective this one day is not required since the client is directly linked to GO's network. This timeframe may be reviewed, should it result that faster fault resolution to end-users is possible.

SLA & SLG – FAULT of a CONNECTION				
ID	Service Level Agreement	Process Steps <sup>11</sup>	Maximum Working Days	Service Level Guarantee
1	Time required between fault reported until OAO is: Informed it is not GO's infrastructure Informed it is GO's infrastructure and resolved	Step 2 – 4 Step 2 - 11*	1 5 <sup>12</sup>	A pro-rate penalty of the monthly contracted rental charge capped up to the monthly contracted rental charge

\*This does not include Step 8 that covers the time required for the OAO's feedback.

Table 7: SLAs and SLGs in respect of the Fault Reporting and Fault Resolution of a VULA FTTP Connection

#### Decision 8

**The above table shall be the SLAs and SLGs for Faults Reporting and Resolution.**

<sup>10</sup> The respective SLA and SLG should be updated by GO if and when it modifies its retail promise.

<sup>11</sup> As per Section 6 & Appendix 3 - Annex E2 of GO's RO.

<sup>12</sup> The 5 days SLA is already incorporated in the existing Annex E3 of the RUO and was subject to consultation in relation to the VULA Decision.

### 3.4 A Note on the Handover point/s

In the consultation paper the MCA had noted that the RUO currently in force, specifically under Annex E3, stipulates an SLA and associated SLG on the Handover point/s. This was subject to public consultation and included in the VULA Decision, and therefore was outside the scope of consultation. The relative SLA and SLG are being reproduced hereunder for the sake of completeness.

SLA & SLG – HANDOVER POINT			
ID	Service Level Agreement	Maximum Service Loss	Service Level Guarantee
SH01	The handover point falls within GO's network	4 hours every calendar month *** (excluding scheduled maintenance)	20% of the contracted service charge for the relevant month.  Maximum charge is of 30-day charges for the affected service per annum.

\*\*\* Where a calendar month contains less than 30 days, the service guarantee and any credit will be calculated on a pro rate basis.

Table 8: SLAs and SLG in respect of the Handover Point

#### 3.4.1 Response from the Operators

Further to the summary given in Section 2.4.1, Vodafone also raised a concern that the monthly maximum service loss of 4 hours every calendar month is equivalent to 99.4%, which is not acceptable to Vodafone since it aims for a service that renders 99.9% ongoing service.

#### 3.4.2 MCA's Response and Decision

Further to Section 2.4.2 the MCA, once again brings to the attention of Vodafone that the Handover SLA and SLG was addressed in the previous VULA Decision. Furthermore, Vodafone did not make reference to any GO retail commitment that mentions a 99.9% service availability for FTTH, nor could the MCA identify such a universal commitment in Vodafone's own service offerings. Notwithstanding, the MCA reiterates that it remains intent in safeguarding an end-result that ensures non-discrimination between the SMP operator and an OAO. In this regard, the MCA believes that the new KPI introduced in Section 2.4 to specifically measure total service uptime, at present, is sufficient. In such manner, the reported KPIs and service levels shall continue to be monitored and may be developed further in line with market developments.

### 3.5 Other Improvements in SLAs/SLGs Going Forward

As already highlighted under Section 3.1 above, the RUO currently in force already stipulates a number of SLAs, specifically under Annex E3 of same. In the consultation document, although the MCA did not propose changes to those SLAs, the MCA stated its intention to monitor and, if deemed

proportionate and justifiable, refine and mandate changes going forward to the SLA, upon observing actual activity from metrics collected, and subject to the responses of the consultation. In addition to the changes already mandated through this Decision Notice, the MCA reaffirms that if, following a thorough analysis of the reporting submissions in relation to KPIs, in particular, if it results that any of the following circumstances may be occurring, then the MCA reserves the right to mandate downward revisions to the SLAs following further consultation:

- KPIs reveal a consistent pattern of better performance compared to the SLA's timelines and /or
- KPIs reveal discriminatory behaviour between wholesale and GO retail.

## 4. REPORTING TIMELINES

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### 4.1 Reporting Timelines

As explained throughout the consultation document, the main purpose of the proposed lists of metrics is to monitor GO's adherence to the non-discrimination obligation. The MCA had therefore proposed a quarterly submission of KPIs by GO.

Furthermore, in order to ensure effective monitoring of the reporting proposed in the consultation document, the Authority had stated that it is imperative for the MCA to have the possibility to seek data corroboration from the OAO i.e. the party to the RUO who would be mostly impacted by any discriminatory behaviour by GO. It was therefore proposed that the OAO keeps record of its requests raised with GO in connection with VULA service provisioning under the same RUO.

#### 4.1.1 Response from the Operators

Vodafone mentioned that the MCA should publish the information provided by GO.

#### 4.1.2 MCA's Response and Decision

The MCA does not agree that the KPIs provided by GO should be routinely published, as they represent detailed metrics on GO's retail business which are commercially sensitive and not published by any other operator. Nonetheless, should the need arise, the MCA will exercise its final discretion on information (or a sub-set thereof) that may need to be disclosed in line with the MCA's confidentiality guidelines.

In conclusion the MCA identifies that the reporting should take place as detailed below.

Reporting Period	Reporting by End	Reporting measures
January – March	May	The activity during the period January to Mid-May in relation to January – March Requests.
April – June	August	The activity during the period April to Mid-August in relation to April – June Requests.
July – September	November	The activity during the period July to Mid-November in relation to July – September Requests.
October – December	February	The activity during the period October to Mid-February in relation to October – December Requests.

Table 9: Timeframes for Quarterly submissions



Where:

Reporting Period is defined as the timeframe during which a request for Service, Termination or/and Fault occurred;

Activity Period is defined as the timeframe during which the request is processed.

In defining the above mentioned timeframes, the MCA took a number of considerations amongst which the following:

1. the metrics should capture the number of requests that occurred during the reporting period.
2. The time lag contemplated is deemed necessary in order to allow for a full comprehensive measurement of the metric in question in relation to the request.

The above timelines should therefore ensure that the MCA is provided with timely reconciliations and direct mapping between requests being reported in relation to the processes triggered by same. This will translate into timely reaction by the MCA to any signs of non-compliance by GO to the non-discrimination obligation onerous on GO.

In order to safeguard any issues of non-compliance with the non-discrimination obligations, the MCA is reserving its right to corroborate data from the OAO, the absence of which may weaken the effective monitoring of same.

#### **Decision 9**

**The above reporting methodology is to be adopted for KPIs.**

## **4.2 Implementation**

As clearly amplified above, the MCA had proposed a number of metrics to be reported on a quarterly basis by GO. The reporting proposed on the part of the OAO was purely on '*as the need arises*' basis, particularly in instances where the same OAO raises doubts or concern on the actual adherence to the non-discrimination obligation by GO.

The MCA had emphasised that the overriding purpose of the proposed metrics is primarily the monitoring of the non-discrimination obligation by GO between the OAO as the wholesale customer of GO and GO retail arm. Their relevance and importance stems from cross comparison of the activities being reported on the OAOs requests vis-a-vis GO Retail. The MCA had therefore proposed the implementation of the reporting to trigger as soon as there is a party to the RUO.

#### **4.2.1 Response from the Operators**

Vodafone commented that they agree that the information should be reported on a quarterly basis but suggested that the data collected should reflect each month separately.

#### **4.2.2 MCA's Response and Decision**

With regard to Vodafone's proposal of monthly reporting, the MCA points out that monthly data is not immediately required for the purpose of monitoring the non-discrimination obligation. However, the MCA reserves the right to ask for monthly data in case of any issues formally raised with the MCA.

A final consideration is that the MCA had proposed in the Consultation the implementation of the reporting to trigger as soon as there is a party to the RUO. By the time of publication of this Decision Notice such an eventuality has indeed materialised, with GO and Vodafone signing a VULA agreement. The MCA is therefore updating its decision to take cognisance of this development.

According to the RUO, GO requires a maximum of six months from the signature date of the VULA agreement to procure and install the necessary network components in its network. The agreement between GO and Vodafone was signed at the beginning of October 2018, which means that activation in line with the RUO is set to occur by the beginning of April 2019.

In line with the original proposals made by the MCA as supplemented by the above developments:

- 1) GO is to measure KPIs for the quarter October to December 2018 (at the start of which a party to a VULA agreement came into force). GO will only measure its own KPIs during this quarter, as it falls within the six-month time period for activation. As this will be the first quarter covered by the Decision, GO is to report these KPIs to the MCA on a best effort basis;
- 2) GO is to measure and report KPIs for the quarter January to March 2019. As in the case of the preceding quarter, GO will only report its own KPIs during this quarter, as it falls within the six-month time period for activation;
- 3) In subsequent quarters, GO will measure and report its own KPIs as well as those for service provided to OAOs, given that such periods fall after the six-month time period for activation.

#### **Decision 10**

**A) Given that there is a party to a VULA agreement, the implementation of the KPI reporting established in this Decision Notice shall apply as laid out above.**

**B) The resulting SLAs and SLGs are to be incorporated by GO in Annex E3 of the RUO and therefore subject to the terms and conditions of the RUO, within 30 days from the publication of this Decision Notice<sup>13</sup>.**

**C) These amendments shall be applied to any agreements which may have been concluded in the interim in accordance with the review clause set out in the RUO.**

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<sup>13</sup> For the avoidance of doubt, this Decision Notice does not withdraw any other safeguards which may not be explicitly mentioned herein.

## 5. WAY FORWARD

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The MCA will keep monitoring any developments occurring in this particular area, including changes that may impact any of the services offered within the VULA reference offer.

Going forward, the MCA remains committed to ensure adherence to the non-discrimination obligation in relation to the VULA reference offer, as and when the need arises, and in line with market developments.

Under all circumstances, the MCA reserves the right, in accordance with its powers at law, to revisit and make changes to this Decision whenever it is deemed necessary, in order to ensure that GO respects the conditions set out herein and to enforce compliance of the non-discrimination principle.

## Annex – Consolidated Decisions

Decision	Requirements
Decision 1	<p>GO shall report to the MCA the specified KPIs on a regular basis and as established in this Decision Notice.</p> <p>The MCA reserves the right for systematic, or case-by-case, investigation, or audit, should the need arise.</p> <p>OAOs also shall ensure that they are capable of reporting equivalent information upon demand by the MCA.</p>
Decision 2	<i>'Table 1: KPIs on the Order Validation and Installation of VULA FTTP Connection'</i> shall be the KPIs for the Order Validation and Installation phase
Decision 3	<i>'Table 2: KPIs on the Termination of a VULA FTTP Connection'</i> shall be the KPIs for the Termination phase.
Decision 4	<i>'Table 3: Key Performance Indicators on the Fault Reporting and Fault Resolution of a VULA FTTP Connection'</i> shall be the KPIs for the Faults Reporting and Resolution.
Decision 5	<i>'Table 4: Key Performance Indicator on the uptime of the FTTH network'</i> shall be the KPI for the FTTH total service uptime.
Decision 6	<i>'Table 5: SLAs and SLGs on the VULA FTTP Connection Order Validation and Installation'</i> shall be the SLAs and SLGs for Order Validation and Installation.
Decision 7	<i>'Table 6: SLAs and SLG on the Termination of a VULA FTTP Connection'</i> shall be the SLAs and SLG for the Termination phase.
Decision 8	<i>'Table 7: SLAs and SLGs in respect of the Fault Reporting and Fault Resolution of a VULA FTTP Connection'</i> shall be the SLAs and SLGs for Faults Reporting and Resolution.
Decision 9	<i>Section 4.1</i> is the reporting methodology to be adopted for KPIs.
Decision 10	<p>A) Given that there is a party to the RO, the Implementation of the KPI reporting established in this Decision Notice shall trigger as laid out above.</p> <p>B) The resulting SLAs and SLGs are to be incorporated by GO in Annex E3 of the RO and therefore subject to the terms and conditions of the RO, within 30 days from the publication of this Decision Notice.</p> <p>C) These amendments shall be applied to any agreements which may have been concluded in the interim in accordance with the review clause set out in the RUO.</p>