

Review of Must Carry Obligations

Final Decision

MCA/D/13-1683

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EXECUTIVE SUMMARY

By virtue of this decision the MCA is removing the Must-Carry obligation with respect to all General Interest (GI) stations from the Cable TV analogue tier. Whilst this Decision comes into immediate effect, the MCA is giving a one year transition period in order to give ample time to all stakeholders involved, that is, operators, broadcasters and the viewing public to take whatever measures they deem necessary in order to adjust to this fresh state of affairs.

The justification for the removal of Must-Carry from analogue cable is based on the following factors:

- The analogue cable tier is no longer marketed by Melita, given the obsolete nature of the underlying technology. The number of existing subscribers is dwindling constantly. What constitutes a significant number of users - a key criterion for must-carry - is fundamentally a question of relativity. Nevertheless, the existing number of subscribers, added to the constant downward trend in analogue subscriptions, (from 13% in 2011 to under 6% of the total pay TV population in Q1, 2013) cannot be said to be significant.
- The previous point has to be seen in the context of the existence of an equivalently priced digital offering that provides a larger number of channels, including all the GI channels. There are no barriers to switch from the remaining analogue tier to its digital cable equivalent from both a technology and a price standpoint. There is therefore a suitable replacement offering available to analogue cable subscribers.
- The continued imposition of must-carry on the analogue tier presents opportunity costs of a significant nature, and would therefore be disproportionate. This capacity is contended by digital Cable TV and cable broadband, both of which are much more efficient and provide significantly more value added than analogue cable TV.

This Decision follows the publication of a consultation document on the 26th April 2013, with a four-week response period. On the date of closure of the consultation period, the MCA had received two responses, from Melita Cable and Calypso TV respectively. The responses did not, in effect present any new material that could in some way change the MCA's consultation proposal.

Hence the decision, on the part of the MCA, to confirm its consultation proposal to remove must-carry from Analogue Cable. It is understood that the removal of the must-carry obligation from the analogue cable platform does not, in any way, equate to the removal of the channels themselves. The impact of this decision is that, after the date when the removal of must-carry becomes effective, the relationship between the cable operator and the GI channels becomes a commercial one as far as the analogue platform is concerned.

Must-carry on the digital cable platform will remain.

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1.0 INTRODUCTION

1.1 PURPOSE AND SCOPE

This Document represents the response to the Consultation on the same topic issued on the 26th April 2013 and the resultant decision.

1.2 BACKDROP

On the 2nd of December, 2011, the MCA issued guidelines on how it would determine must-carry obligations. On the basis of those guidelines, in February 2012 the MCA designated Melita Cable Plc¹ as having must-carry obligations on both its cable analogue and digital platforms.

The Must-Carry guidelines specified that any subsequent must-carry obligation would be valid for three years. The MCA, however, reserved the right to review the situation before the end of the three year period, should significant developments in technology and/or the market take place, to the extent that they would warrant an earlier review.

The MCA guidelines were drawn up on the basis of six must-carry channels, as had been established in section 4.2.1 of the Government policy and strategy on broadcasting meeting General Interest Objectives (GIOs):

“An operator subjected to must-carry obligations will be required to carry the six GI TV channels on those networks used by a significant number of users as the principal means to receive TV broadcasts, as indicated by the MCA. This entails the operator to make available part of their network capacity for the retransmission of these channels.”

In September 2012, the MCA was informed by the MITC that, on the initiative of the Ministry for Tourism and Culture, as the ministry responsible for broadcasting policy, the number of General Interest TV stations would be increased from six to seven.

In September 2012, the Broadcasting Authority informed the MCA that it had granted a General Interest (GI) broadcasting licence to Calypso Music Channel, as the 7th GI channel, after it had passed the relevant BA acceptance criteria.

The existing MCA determination with respect to must-carry was carried out on the premise that the number of GI channels was established at six. The addition of a seventh channel represented a significant development in the market and therefore the MCA felt the need to review its position in light of the possible impact that such a development may have.

Meanwhile, another significant development has been taking place in the Cable TV retail market, having to do with the ongoing migration of analogue cable TV subscribers to other platforms, mainly

¹ <http://www.mca.org.mt/service-providers/decisions/must-carry-obligations-designation-obligations-providers-networks-used-0>

to Digital Cable TV. This migration gathered momentum throughout 2012 and is ongoing, with the result that the number of analogue cable subscribers has now dwindled somewhat.

As a result of these developments, the MCA felt the need to consult publicly again, in order to review the current obligations and propose changes where necessary.

1.3 LEGAL BASIS

The legal basis for imposing must-carry obligations is Regulation 49 of the Electronic Communications Networks and Services (General) Regulations, 2011 (SL 399.28 of the Laws of Malta) transposing Article 31 of the Universal Service Directive. Regulation 49 states that:

“49.(1) The Authority may impose reasonable “must-carry” obligations for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts:

Provided that such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.”

1.4 EUROPEAN COMMISSION GUIDANCE

The European Commission published guidance on must-carry obligations back in 2002². Amongst other things, according to the guidance, the extension of must-carry obligations to networks other than ‘traditional broadcast platforms’³ would only be legitimate if “a significant number of end-users were to use such networks as their principal means to receive television broadcasts.”⁴. This suggests that a threshold, in terms of number of households connected to a particular TV broadcast network, is to be reached before must-carry obligations may be applied. This is so as not to create disproportionate requirements on new entrants and on the development of new services.

With regard to remuneration, the European Commission's guidance document maintains that Member States are under no obligation to ensure remuneration for operators in return for must-carry obligations. Where remuneration is provided, Member States will, however, have to ensure that there is no discrimination between operators, and that it is applied in a proportionate and transparent manner. This provision aims to take account of the cost burden on commercial operators who need to reserve the network capacity required for retransmission of the GI TV channels.

² http://ec.europa.eu/information_society/policy/ecomms/doc/current/broadcasting/working_doc_must_carry.pdf

³ The guidance identified cable, satellite, and terrestrial broadcasting as traditional “broadcast” platforms serving the principal means to receive television broadcasts, and that the vast majority of households will continue to use a traditional “broadcast” platform for reception of broadcast channels in the foreseeable future. Notwithstanding rapid advances in communications technologies, these platforms even today still serve as the principal means to receive television broadcast channels by the vast majority of households.

⁴ European Commission Working Document on ‘Must-carry’ obligations under the 2003 regulatory framework for electronic communications networks and services’, 22 July 2002, pg 5.

1.5 IMPLICATIONS

The new situation, posed by the addition of a seventh GI channel, has been reviewed in light of the above legal provisions. Essentially there is the need to balance the rights of users to view the programming in question against the obligations of 'must-carry' operators to transmit them in light of the fresh development under discussion.

In establishing whether a review of the existing 'must-carry' arrangements was needed the MCA took two elements into consideration. The first element addressed whether platforms in question are used by a significant number of users as their main means of viewership and whether reasonable alternatives exist. The second element dealt with whether the new situation posed by the addition of a seventh must-carry channel would introduce an additional burden on the designated operator, to the extent that a review of the existing arrangements is necessary.

In conducting a re-assessment of the situation it was also necessary to review key variables, essentially consisting in the number of users with respect to each platform being assessed as well as any technology and commercial aspects that may have changed in the meantime. While this assessment has been made only a year down the road, sector developments have been material enough as to warrant a review of existing arrangements.

1.6 SECTOR STATUS

The situation, as far as the number and types of transmission platforms are concerned, presents no material changes from the end of 2011. Analogue terrestrial free-to-air TV transmissions were switched off on the 31st October 2011, after the necessary switch-over to a GI DTT platform, thus bringing the digital switch-over ('DSO') period to a successful conclusion.

TV channels are today broadcast in Malta on the following networks:

- Free-to-air DTT network (GI TV broadcast network) operated by the national TV broadcaster, PBS.
- Commercial analogue and digital cable TV networks.
- Commercial DTT and IPTV networks.

A survey of domestic (ie. excluding subscriptions for commercial use) take-up of TV by platform, mid-way through 2011, had established that the vast majority of households (96.6%) were subscribed to a pay TV package with at least one of the local pay TV operators. Of these, it was estimated that:

- 13% subscribed to analogue cable TV services.
- 33% subscribed to digital cable TV services.
- 50% subscribed to the DTT services.
- 3.5% subscribed to DTT services and either analogue or digital cable TV services.

IPTV had just been launched and consequently no statistics were available at the time.

No household survey has been made since the one on which the above percentages are based, so it is not possible to make a direct comparison. However, latest statistics of actual subscriptions by platform indicate a steady decline of analogue subscriptions.

The latest figures (Q1, 2013) indicate that the number of analogue cable TV subscribers now stand at 8,187 out of a total population of Pay TV subscribers amounting to 148,592. This equates to 5.5% of the total pay TV population. The decline of analogue cable subscriptions is therefore both material and ongoing.

This phenomenon can be explained by the fact that Melita is actively promoting an equally priced digital TV platform that is, at the same time, rather more content-rich. The switch from analogue cable to digital cable carries a one-time €20 installation charge per decoder but other than this, subscription fees are the same for both analogue and digital tiers.

As for number of channels, the Melita Digital Medium (M) tier markets 40 TV channels, whereas the similarly priced Analogue Cable tier airs 18 channels. The analogue tier is no longer marketed or sold by Melita, whose intention is to wind down this obsolete, bandwidth-hungry technology as soon as practically possible.

2.0 IMPACT OF A SEVENTH GI CHANNEL

The addition of a seventh GI channel presents a significant change to the scenario on which the current Must-Carry designation is based. The following are the individual platforms that had been addressed in the December 2011 guidelines:

- Digital Terrestrial TV (DTTV)
- Digital Cable TV
- Analogue Cable TV
- IP TV
- Satellite TV

2.1 OBLIGATION TO CARRY BY PLATFORMS OTHER THAN CABLE

The MCA had the following to say in its guidelines of the 2nd December 2011:

“Among others, the MCA will consider whether the imposition of a must-carry obligation on a particular operator will entail an excessive cost burden, as in the case of satellite operators.

In this regard, the MCA will, where it deems appropriate, consider proposals on the part of an operator subjected to a must-carry obligation, for alternative ways to convey the GI TV channels to their end-users. When considering any such requests, the MCA will be guided by the need to ensure that such channels will be seamlessly available to all end-users of that particular network with no undue burdens placed on end-users.

Furthermore, the MCA is conscious that under current circumstances, must-carry obligations on commercial DTT network operators would result in unnecessary duplication of TV transmissions. This, in turn, leads to inefficient use of spectrum. For the purposes of spectrum efficiency, therefore, DTT operators would not be obliged to retransmit the GI TV channels on their DTT network; provided that the equipment supplied to their end-users to receive the pay TV channels can be seamlessly used to receive the initial transmissions of the GI TV channels.”

IPTV packages were deemed as not being used by a significant number of users at the time, and therefore one that is not yet subject to a must-carry obligation⁵.

The MCA deems that there has been no material change in the market as to warrant any concomitant change in approach to the application of must-carry obligations on the mentioned individual platforms.

⁵ Although the number of IPTV subscribers stand at 4,401, as at Q1, 2013, the same argument still applies.

2.2 2012 MUST-CARRY DESIGNATION

The MCA designated Melita Cable as having ‘must-carry’ obligations on the basis of the December 2011 guidelines. In the designation, on February 2012, the MCA justified its arguments on the following grounds:

“In line with the above guideline and the current make up of the TV broadcasting sector described in section 2.6, the MCA considers that the following three prevalent TV broadcast networks – analogue and digital cable TV, and DTT – are all used by a significant number of end-users as the principal means to receive TV broadcasts:

- *Melita plc - Analogue cable TV: The analogue cable TV network has been around since 1991 and until 2004 had a 100% market share of the pay TV market. Today it is still used by 13% (18,200) of households, which number the MCA considers to be significant.*
- *Melita plc - Digital cable TV: The digital cable TV network launched in 2005 today enjoys a significant market share of households hovering around 33% (46,200).*
- *GO plc - DTT: The commercial DTT network launched in 2005 captured a significant market share of households estimated at 50% (70,000). In this case, however, issues of spectrum efficiency and proportionality in application are taken into account⁶.”*

On the criterion that must carry should be imposed on TV networks used as a principal means to receive TV broadcasts, the designation determined that:

“This result confirms that the Melita plc and GO plc respective analogue cable, digital cable and DTT networks are all used by their respective end-users as the principal means for receiving TV.”

The argument then went into the principle of reasonableness in application with the following conclusion:

“In this regard, the MCA is conscious that under current circumstances, must-carry obligations on commercial DTT network operators would result in unnecessary duplication of TV transmissions. This, in turn, leads to inefficient use of spectrum.

For the purposes of spectrum efficiency, therefore, GO plc is not being obliged to retransmit the GI TV channels on its DTT network; provided that the equipment supplied to its end-users to receive the pay TV channels continues to be seamlessly used to receive the initial transmissions of the GI TV channels.”

The 2012 designation document finally went into the issue of remuneration and reached the following conclusion:

⁶ Must-Carry Obligations - Designation of Obligations on Providers of Networks used for Television and Radio Distribution Services – Document No: MCA/D/12-0768 of the 23rd February 2012, Page 10

“...pay TV operators have a one-to-one relationship with their subscribers. In particular, operators providing wired services such as cable and IPTV have access to their subscribers’ premises to install a connection to their network. Subscribers are typically charged to receive the GI TV channels which are normally packaged together with other channels.

Whilst acknowledging the fact that must-carry obligations may place a cost burden on the undertaking, the MCA cannot ignore the fact that pay TV operators recover costs through subscription fees and are not required to pay any copyright fees associated with the retransmission of the GI TV channels.

Given this model, the MCA considers it disproportionate for pay TV operators to be remunerated further by broadcasters or the State for the retransmission of the GI TV channels. Furthermore, any request on the part of an operator for any remuneration would need to be justified.”

2.3 MUST-CARRY OBLIGATIONS ON CABLE PLATFORMS

The February 2012 designation thus identified the digital and analogue cable TV platforms as being subject to must carry obligations. Moreover, the designation determined that there should be no remuneration (by broadcasters to the cable network) for carriage.

2.3.1 Must-Carry on Digital Cable

The latest subscriber figure on digital cable (Q1, 2013) is 73,020 subscribers, translating into a 49.1% market share for the digital cable platform, which is the biggest market share. Both absolute numbers and percentage market share for this platform have declined marginally over 2011. Nonetheless, the digital cable platform still commands viewership by a significant number of users, who utilise it as their main means of TV viewership.

As far as reasonableness in the application of ‘must-carry’ is concerned, the addition of a seventh channel as a must-carry channel on digital cable is not felt to constitute a significant burden on the cable operator. Melita Cable at the moment advertises a maximum of 155 TV channels on its XL package and a minimum of 40 TV channels on its M package. This would indicate adequate capacity to carry the seventh GI channel without any undue technological or commercial impact.

Melita have, in effect, already started transmitting this seventh channel on their digital platform, albeit under protest. This course of action confirms that:

1. The transmission of the seventh channel on the digital cable platform does not pose a significant technical issue for Melita and
2. Melita was ready, albeit with due reservations, to comply with the obligation to host a seventh GI channel, where this was technically and commercially feasible.

2.3.2 Must-Carry on Analogue Cable

Analogue cable TV subscriptions are currently down to 8,187, which represents a market share of 5.5% of the entire TV subscription (domestic and business) market. In 2009, analogue cable TV enjoyed a market share of 20.58% of the same market. No service is sold any longer on this platform and Melita only allows for the continuation of the old analogue reception tier, which is the entry level tier, for which no decoder is required. All the other analogue ‘value added’ tiers that

necessitated the use of a decoder have been discontinued. Melita intends to discontinue this service – effectively executing an analogue turn-off on cable – in a gradual fashion.

Meanwhile, Melita offers an equally priced package on its digital tier, the Medium ‘M’ Package which, however, offers 40 channels against the analogue product, which currently shows 18 channels, among which six GI channels.

Melita’s digital ‘M’ package is clearly meant as a migration vehicle for subscribers to shift from analogue to digital. It is being offered at the same price as the old analogue reception (entry tier) package. Currently, the only additional expense for subscribers who opt to switch from analogue to the equivalent digital cable package is a one-time €19.99 installation fee per set-top box.

Given the one-time nature of this expense, it is felt that the digital offering does not present any significant barrier for subscribers to migrate from analogue to digital cable. This factor, which is, most likely, the primary cause for the dwindling number of analogue cable subscribers, is deemed as being of enough significance as to necessitate a review of the must-carry obligation on analogue.

In effect, given these two related factors, namely that analogue and digital packages are (bar the one-time fee) equally priced and that the numbers of analogue subscribers has, over the past two years, dwindled significantly to just under 6% of the commercial TV market, the justification for a must-carry requirement on analogue cable is put into question.

The six must-carry channels currently being transmitted on analogue, were all effectively present on the analogue cable entry tier for several years. Five of them have always been must-carry channels and the sixth – Favourite TV - was carried on analogue on commercial basis until its designation as a GI channel.

The February 2012 must-carry designation effectively only changed the status of Favourite Channel, when it was included along with the other five as a must-carry channel. In terms of physical broadcasting space requirements, however, there were no increases on the analogue tier when the February 2012 designation was made. This state of affairs was a particularly important factor that influenced the MCA’s decision to retain must-carry on the analogue cable platform at the time.

The addition of a seventh channel on the analogue tier would mean that additional spectrum for this GI channel will have to be made available on the analogue tier. In terms of opportunity cost, this channel comes at the expense of the potential forfeiture of some ten digital channels, or of significant bandwidth that would otherwise be used for the provision of high-speed broadband. Such a situation would be far from ideal.

In its Consultation the MCA considered a number of options in terms of a way forward, to the effect that:

- The seventh channel is added to the analogue tier under the same terms and conditions, that is, for free, as with the other GI broadcasters. This solution was not deemed reasonable on the Cable operator, given that additional resources are now required to carry the GI channels, in the form of an additional frequency.

- The seventh channel is added to the analogue tier but payment for carriage is now introduced for all GI channels on the analogue platform in order to compensate for the additional costs borne by Melita in taking on this additional broadcast. Quite apart from the difficulty in establishing the significant opportunity cost of the additional frequency required for the broadcast transmission, this would result in added costs to broadcasters, without their being able to seek compensation for their transmission rights, given their GI status.

- The third option is to remove must-carry on analogue cable completely, given the ease of switching to the equivalently priced digital tier. This would, on the one hand, remove the existing guarantees for broadcasters with respect to transmission on the analogue cable platform. On the other hand, however, broadcasters could negotiate with the cable operator on viewing rights.

All told therefore, given the ease of switching for viewers – from both a technical and a financial standpoint - to a superior and equally priced product, the surviving analogue package can now be considered as seamlessly interchangeable with the digital offering.

From the point of view of reasonableness, the MCA opined, in its proposal issued for consultation that there is no compelling justification to continue imposing ‘must-carry’ obligations on the analogue tier.

3.0 RESPONSES TO CONSULTATION

At the closing date of the consultation period the MCA had received two responses, one from Melita Cable PIC (Melita) and the other from Calypso Media Communications Ltd (Calypso). A rendering of the two responses is seen hereunder.

3.1 MELITA RESPONSE

Melita expresses its agreement with the Authority's proposal to remove the must-carry obligation from the analogue Cable tier. Melita confirms that it no longer offers the analogue platform to subscribers and that there is only one remaining tier of analogue subscribers. Melita also confirms that its 'M' package is a similar but improved alternative offered on its digital TV tier at an equivalent price. This tier includes the General Interest channels, hence satisfying its 'must-carry' obligations.

Melita also highlights the fact that in relation to analogue, digital TV offers a better picture and sound quality, together with a wide range of interactive applications *"which enhance the interaction between the viewer and the broadcaster."*

The maintenance issue with respect to analogue cable transmission equipment, which is now an obsolete technology, is also raised.

Finally Melita confirms that the spectrum currently utilised by analogue will be required for other more in-demand services such as internet, digital TV and on-demand services. The removal of the must carry obligation from the analogue tier will enable more efficient use of spectrum.

3.2 CALYPSO RESPONSE

Calypso acknowledges that the Must-Carry review proposal was made by the MCA with the 'common good' in mind, on the basis of its reading of the developments of the past few months. Respondent also expresses appreciation of the fact that the Authority has to strike a difficult balance in addressing the interests of network operators, broadcasters and viewers.

Nevertheless, according to the respondent, the way that the document has been written may give rise to misinterpretation. Calypso feels that it has been made a scapegoat in the way that the consultation document has been written.

Ultimately, the MCA's recommendation is not deemed by the respondent as being a balanced one. Particular attention is drawn to Section 4.5 of the consultation document, which proposes the removal of 'must-carry' from the analogue cable tier and the establishment of a commercial relationship thereafter. Calypso deems such an arrangement as being against the interest of Maltese broadcasters.

Calypso deems that the addition of its programming on the analogue cable tier would be of benefit to the consumer. Respondent also voices its 'suspicion' that Melita intends removing all local channels from its analogue tier and also 'predicts' that Melita might decide to switch off this platform in the coming years.

Calypso refutes the argument that the addition of a GI channel on Melita's analogue tier would present problems and argues, instead, that adequate space exists on this platform.

Calypso proposed two options for action, namely:

1. That Melita starts to transmit the seventh channel (ie. Calypso) on its analogue tier at its own expense, or
2. That Calypso, being the latest GI station on the scene, renounces its right to be transmitted on a 'must carry' basis on the analogue cable platform, and that all remaining six GI stations remain eligible to 'must carry' status on this platform as is currently the case.

Finally Calypso reiterates its complete disagreement with what it claims is the MCA recommendation that Maltese stations be removed from the analogue cable platform.

3.3 MCA COMMENTS AND CLARIFICATIONS RELATIVE TO RESPONSES RECEIVED

The MCA wishes to, first and foremost, thank the two respondents for having taken an interest in its proposals as to submit their reactions.

The MCA has no comment to make on the Melita response, which is fully in agreement with the MCA proposals and therefore makes no argument to which the MCA must provide any explanation. If anything, Melita provides additional arguments relative to difficulties in maintaining an obsolescent network as well as to the advantages, in terms of superior picture and sound, of viewers' moving from analogue to digital programming. Although not central to the argument on the table, both arguments present further context as to the inevitability of the transition from analogue to digital TV.

As regards the Calypso submission, it is confirmed that the consultation document does not, in any way, place onus or responsibility on Calypso for the proposed removal of 'must-carry', although the addition of a seventh channel to the GI platform was the trigger for a review of the situation and is partly the reason for the proposal to remove 'must-carry' from the analogue platform. There are, nonetheless other factors leading to the conclusion that this regulatory provision is now excessively onerous, and namely the spiralling number of users of analogue cable, coupled with the fact that the same service provider offers a larger package on its digital service at an equivalent price.

All these considerations are made in the context of the increasing opportunity cost of bandwidth, which can be put to much more productive uses. To conclude, the MCA decision is based on objective considerations and does not, in any way, place any individual undertaking as the basis for its decision.

Analogue cable is obsolete and the opportunity cost of retaining 'must-carry' is high, in light of reasonable alternatives for TV viewers. Rapidly dwindling numbers of analogue cable subscriptions bear this thesis out. Thus, retaining must-carry on the analogue cable platform can no longer be deemed a proportionate measure. Having said this, the removal of 'must-carry' does not equate to the removal of Maltese stations from analogue cable. That remains a commercial matter, to be taken up between the cable operator and individual TV channels.

The full transition from analogue to digital is an inevitable one, which has already taken place on the terrestrial TV platform, via the Digital Switch-Over (DSO) initiative. Analogue turn-off is now happening on cable. Thus, Calypso's 'prediction' of an eventual Melita analogue switch-off relates to a measure that has been on the wall for quite some time now and is clearly referred to in the MCA's consultation document⁷.

Any decision taken by the MCA cannot give rise to undue discrimination. Among others, Calypso has proposed to allow the 'status quo', that is, must-carry on analogue for the existing six channels, but excluding Calypso from benefitting from the same facility. The MCA deems that such a course of action would be discriminatory against Calypso in the circumstances. Even so, the need for non-discrimination, despite its importance, is secondary to objective considerations on which this proposal is based, namely the opportunity cost of bandwidth, the drastic decline in subscriptions and the existence of an equivalently priced package on the digital cable platform.

The MCA is by no means dictating the removal of Maltese TV stations from analogue cable, nor does it have any legal means (or any motive) to dictate such a course of action. The MCA does, however, have the obligation to ensure that any regulatory obligations that it imposes are proportionate and continue to be so over time. Must-carry on analogue cable can no longer be deemed as being such, given the ease with which subscribers can switch and the opportunity costs involved.

In light of the need for all concerned to take stock of their respective situations and adapt to the new state of affairs, the MCA has proposed a one-year moratorium, following the decision to stop 'must-carry' on the analogue cable platform. This one year period should give the cable operator and individual broadcasters adequate time to take stock and negotiate with each other any terms of carriage as may be feasible.

⁷ Page 8 of the consultation document states the following: "The analogue tier is no longer marketed or sold by Melita, whose intention is to wind down this obsolete, bandwidth hungry technology as soon as practically possible".

4.0 DECISION AND WAY FORWARD

In light of the outcome of the consultation process, articulated in the previous section of this document, the MCA has determined that there has been no development to put into question its proposal to remove 'must-carry' obligations from the analogue cable tier.

Thus, it is hereby determined that 'must-carry' on the analogue cable platform is deemed as no longer applicable with immediate effect. Nevertheless, the GI channels currently being carried on the Melita analogue tier, will continue to be carried under the 'must-carry' obligation until midnight of the 1st September 2014. Thereafter, any carriage arrangements on the analogue cable platform will be on commercial basis, that is, without any regulatory intervention of sorts.

This decision has been taken in light of the prevailing market conditions, which clearly indicate that patronage is dwindling and is now at less than 6% of total subscription levels, and that there exists an equivalently priced package on digital cable.

It is understood that 'must-carry' on digital cable remains and that all stations meeting GIOs (ie. Including Calypso) will continue to be carried under the obligations that currently subsist.

A decision on the total turn-off of the analogue cable platform ultimately rests with Melita.

Ultimately, the decommissioning of obsolete platforms and the re-channelling of network capacity towards innovative and highly efficient uses, as is the case with high speed broadband, will serve to benefit production and distribution of both linear and non-linear audiovisual works. It will bring about drastic improvements in both quantity and quality, as well as innovation that is simply not possible over 'traditional' non-IP platforms. It is for this reason that traditional audiovisual platforms are gradually giving way to IP-based ones.

Thus the development of high speed networks that can carry such IP based transmissions takes on paramount importance, in that it is, among others, the next inevitable phase in the development of audiovisual media.