



MALTA COMMUNICATIONS AUTHORITY

## Universal Service Obligations on Electronic Communication Services

### Consultation

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## EXECUTIVE SUMMARY

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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.

This consultation is intended to analyse and identify which services should be considered as universal services, consider 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 those universal services. 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 control expenditure and afford the universal services in question.

The 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 Universal Service Obligation. The MCA would subsequently evaluate the information submitted by the undertaking in order to determine whether an unfair burden really exists.

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## 1. INTRODUCTION

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Universal Services are defined as a minimum set of services of specified quality which are to be made available to all end-users in the Maltese islands, regardless of their geographical location, and, in the light of specific national conditions, at affordable prices.<sup>1</sup> 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 current universal service regime is based on 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. In this decision, GO plc (hereinafter referred to as "GO") in default of an expression of interest, and in the case were applicants failed to satisfy set criteria, was designated as the organisation responsible to provide the following Universal Services: Provision of Access at a Fixed Location; Directory 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.

The MCA, as the entity responsible for the regulation of the Maltese electronic communications sector in accordance with national and EU legislation, is 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.

This consultation aims at examining the scope of the universal service, in particular in relation to the obligation/s to be met by the designated undertaking. It also considers 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 delineates 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.

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<sup>1</sup> Electronic Communications (Regulation) Act, Cap. 399, Article 21

## 2. BACKGROUND

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### ***2.1 Current Universal Service and Designations***

On the basis of the MCA USO Decision published in April 2010,<sup>2</sup> the following services were established as Universal Services:

- 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 plc is currently providing all the above services as the designated undertaking.

### ***2.2 New Designations***

As stated in the introduction, the current regulatory framework allows the MCA to designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.<sup>3</sup>

The framework requires the MCA to adopt an efficient, objective and non-discriminatory mechanism, whereby no undertaking is *a priori* excluded from being designated. To this effect, any third party may express their interest for the provision of one or more of the universal services.<sup>4</sup>

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<sup>2</sup> Updated in September, 2011

<sup>3</sup> SL399.28, Regulation 22(3); Universal Service Directive 2002/22/EC (“USD 2002/22/EC”) Recital 9

<sup>4</sup> SL399.28, Regulation 22(4)

A designated undertaking may seek to receive funding for any net costs it claims to have suffered in order to provide the universal service. The application is required to include enough detailed information to substantiate such a request.<sup>5</sup> More information on USO funding and the related procedure is found in Section 6 of this document.

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<sup>5</sup> SL399.28, Regulation 30

### 3. LEGAL BASIS

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The fundamental aspects of the universal service regulation are outlined in the Universal Service Directive<sup>6</sup> (the "Directive"), the Electronic Communications (Regulation) Act, Cap.399 (the "Act") and the Electronic Communications Networks and Services (General) Regulations, SL 399.28 (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 (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 social needs.<sup>7</sup>

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 end-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's, to 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 the designated undertaking shall ensure that a comprehensive directory and an up-to-date directory enquiry services are 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 in Part V. Regulation 27 describes that the USOs specified in regulations 23 to 26 shall be available at affordable rates and within the average consumer income and that the Authority has the right to monitor the evolution and level of retail tariffs. Regulations 28 and 29 specifies that end-users shall have the facility to control their expenditure in order to avoid any unwanted disconnection of services and 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 Authority 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 no undertaking is *a priori* excluded from being designated. The designation methods adopted must ensure that the above universal services are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation.<sup>8</sup>

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<sup>6</sup> USD 2002/22/EC, Recital 8

<sup>7</sup> MCA Act Article 4(3)

<sup>8</sup> SL399.28, Regulation 22(4)

## 4. UNIVERSAL SERVICE OBLIGATIONS

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### *4.1 Provision of Access at a Fixed Location*

A fundamental requirement 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 the Regulations, the designated undertaking needs to satisfy “all reasonable requests” for the provision of publicly available service over the network connection<sup>9</sup>. Currently GO, as the designated universal service provider, is required to satisfy the provision of this service on a nationwide level.

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.<sup>10</sup> Conditions associated with the latter requirement are delineated further in section 4.1.2 below.

#### *4.1.1 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.<sup>11</sup>

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<sup>12</sup> shall 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.

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 is proposing 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.

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<sup>9</sup> SL399.28, Regulation 23(2)

<sup>10</sup> SL399.28, Regulation 23(1)

<sup>11</sup> Ibid., Regulation 23(3)(b)

<sup>12</sup> Including Gozo and Comino

***Proposed Decision 1***

**The universal service shall include access at a fixed location in any given area in case 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.**

***4.1.2 Functional internet access***

As an integral part of the requirement 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 end-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 after 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 specified in the same Decision.

As part of the scope of the universal service, the MCA is proposing 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 such a service to the end-user, the designated undertaking shall satisfy the request of the end-user and provide access to this service.

***Proposed 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”*.**

## ***4.2 Directory Enquiry Services and Directories***

The Regulations state that one or more undertaking(s) may be designated by the MCA in order to ensure that:

- a comprehensive directory, which includes all subscribers of publicly available telephone service providers, is made available to all end-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 end-users, including users of public payphones.<sup>13</sup>

In order to enable the provision of directories and directory enquiry services, regulation 42 (2) of the 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<sup>14</sup> in accordance with an agreed format and on terms which are fair, objective, cost oriented and non-discriminatory. The MCA is currently in the process of publishing a separate decision to determine the conditions under which an undertaking may be required to share subscriber directory information with providers of directory services.<sup>15</sup> These include electronic directories; directory enquiry services; and printed directories.

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

The MCA is seeking to take into account the changing needs of end-users in Malta, as well as advances in technology that render the availability of directories and directory enquiry services more efficient and cost-effective. Additional intelligence has also been obtained from an MCA-commissioned survey, the results of which will be described below.

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<sup>13</sup> SL399.28, Regulation 27(1)

<sup>14</sup> Including the provider/s which may be designated to provide a directory or directory enquiry services as a universal service obligation

<sup>15</sup> Link to Consultation and Proposed Decision: <http://www.mca.org.mt/consultations/directory-information-services-and-products>

#### ***4.2.1 Comprehensive electronic directory***

A comprehensive electronic directory is currently being provided as a universal service by GO through its public Internet website<sup>16</sup>. This directory has been available to the general public since 2006, and returns telephone numbers (fixed and mobile) of all consenting subscribers.

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

At the same time the MCA notes that market realities, end-user behaviour, and technical capability have changed since 2006 when the electronic directory started to be provided by GO through its website. End-users are making more calls to mobile telephone numbers and the need to easily and promptly look up mobile numbers has increased. Due to the significant proliferation of smart phones, 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 smart phone has a smaller screen size than a conventional PC, apart from the current web-based interface, the introduction of a smart phone app to access the comprehensive electronic directory should be considered. Besides being a potentially positive branding exercise for the universal service provider, such an initiative would strengthen the case to drop the printed telephone directory as a USO as mentioned further below.

#### ***Proposed 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:**

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

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

<sup>16</sup> Link to GO's electronic directory: <http://www.go.com.mt>

#### **4.2.2 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 this 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 bidders 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 not to publish this directory and accordingly withdrew its General Authorisation in March 2014.

In approaching the current consultation the MCA has assessed the question of whether to impose a universal service obligation to provide a printed directory from four main aspects:

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

#### **A. Survey on end-user directory needs and usage**

In March 2014 the MCA commissioned a Public Perception Survey 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 new residential number, and whether they had found alternative sources other than the printed directory.

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

When the respondents 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 respondents have never or rarely used the last-printed telephone directory, 16% used it sometimes, and only 3% used it frequently.

In addition, 40% of respondents believe that the printed directory is not relevant anymore when compared to other alternatives. From the other respondents 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 respondents stated that they would not purchase a printed telephone directory, whilst 71% of the remaining respondents 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 Internet penetration rate in Malta has increased substantially over the past years, reaching 79% in 2013<sup>17</sup>, thousands of households have access to the Comprehensive Electronic Directory which is being provided free of charge by GO on its Internet 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 nonetheless still access directory data by calling a directory enquiry service at an affordable price.

## **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 the 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 well in excess of one million Euros.

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<sup>17</sup> Eurostat Report: <http://www.mca.org.mt/notices-and-announcements/79-maltese-households-today-have-broadband-connection>

Taking into consideration the magnitude of the cost and the probability that USO funding would be claimed by the undertaking designated with such an obligation, it is felt that more efficient and effective use of such funds could be made, whatever the source of funding. To this effect, operators are currently investing heavily in next generation networks which improve the country's competitiveness, whilst government is also involved in various ICT programmes which have a long-term benefit in promoting digital literacy in Malta.

#### **D. Future commercial possibilities**

The existing authorisation framework allows any undertaking that believes in a commercial business case for publishing a printed directory to obtain the required subscriber directory information from telephony operators. Such commercial undertakings would be required, as a prerequisite, to register with the MCA under a General Authorisation process which only requires a notification procedure.

It should be noted that any entity wishing to publish a printed telephone directory may do so even if it is not listed as a universal service, as long as the entity is authorised by the MCA to provide directory services by means of a simple notification. 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 is currently in the process of publishing 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, the MCA is thus proposing 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.*'

#### ***Proposed 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.**

#### ***4.2.3 Telephone directory enquiry services***

Telephone directory enquiry services are currently being provided by a number of 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 it to be provided for free but at affordable rates. In the past, the MCA allocated

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 will be addressed in Section 4.4.1 below.

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

***Proposed 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 proposed decision 6 below.**

### ***4.3 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<sup>18</sup>. The designated undertaking shall ensure that these public payphones are able to make calls to the '112' emergency number and any other national emergency call numbers free of charge without the necessity to use coins or any other means of payment<sup>19</sup>. The designated undertaking shall also ensure that these payphones offer access to directory enquiry services<sup>20</sup>.

GO, as the undertaking designated to provide this universal service, currently has in operation a substantial number of payphones distributed around Malta and Gozo. 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 770,897 in 2013 and this declining trend is envisaged to continue.

Notwithstanding the above, the availability of public payphones could 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 all the more important in the case of an emergency and where there are no other means of communication at hand.

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<sup>18</sup> SL399.28, Regulation 25 (1)

<sup>19</sup> SL399.28, Regulation 25 (4)

<sup>20</sup> SL399.28, Regulation 25 (5)

Accordingly, the MCA is proposing 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<sup>21</sup> 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; and
- The distance from the payphone being removed to the closest working public payphone would not exceed 2 kilometres<sup>22</sup>.

If these 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 informs the MCA, and the respective local council, which payphone/s is/are being removed and its/their exact location.

If 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 kilometres, 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 in the same and/or adjacent localities;
- Its utilisation rates including details of calls, volumes in minutes and revenues; and
- A comparison with the average national public payphone utilisation rates.

In all cases, prior to the removal of a payphone the designated undertaking is required to display a notice on the payphone itself including 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. One also needs to keep in mind that a number of payphones are considered 'protected' as part of the national heritage.

The above parameters do not release the designated undertaking from the responsibility to maintain additional public payphones, as may be required, in order to meet particular end-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.

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<sup>21</sup> Locality denotes an entire area falling under the responsibility of a particular local council

<sup>22</sup> Measures as the shortest distance in a straight line on a map

The Authority does not rule out the possibility of granting permission for the removal of a public payphone which does not satisfy the mentioned criteria, or vice versa. This however shall only take place in exceptional cases.

#### **Proposed 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 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 fair 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; and**
- **The distance from the payphone being removed to the closest working public payphone would not exceed 2 kilometres.**

**If the designating undertaking still wishes to apply for the removal of a payphone although the distance to the closest payphone would exceed 2 kilometres, it shall place an application with the MCA with the following information:**

- **The exact location of the payphone;**
- **Its distance from the closest other working public payphones located in the same and/or adjacent localities;**
- **Its utilisation rates including details of calls, volumes in minutes and revenues; and**
- **A comparison with the average national public payphone utilisation rates.**

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

#### ***4.4 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 directories.<sup>23</sup>

In line with the current USO decision, GO, as 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, the MCA is proposing to retain these universal service obligations under the same conditions.

##### ***4.4.1 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 who 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.

##### ***Proposed 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.**

##### ***4.4.2 'Telecare' type of service allowing easy access to emergency 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.

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<sup>23</sup> SL399.28, Regulation 26 (1)

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, with 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.

***Proposed Decision 7***

**The universal service shall include the provision of a ‘Telecare’ type of service allowing easy access to emergency 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.**

#### ***4.5 Reduced Tariff Options to Ensure Affordability***

The MCA may specify requirements on the designated undertaking in 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 services.<sup>24</sup>

GO as the undertaking designated to provide reduced tariff options as a universal service, is currently providing a reduced ‘line-rental’ tariff scheme to eligible subscribers specifically included in a list provided by the responsible Government entity. The MCA is of the opinion that this scheme is meeting the objectives of the universal service successfully and therefore should be maintained.

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<sup>24</sup> SL399.28, Regulation 27 (2)

***Proposed Decision 8***

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

#### ***4.6 Control of Expenditure by users***

The MCA recognizes the importance of facilities through which end-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 end-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, it is proposing to retain the obligation for provision of these services as measures for end-users to control their monthly expenses in the manner described in Schedule 4 Part A of the Regulations.<sup>25</sup>

##### ***4.6.1 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, or particular types of numbers such as premium rate services, as a means for consumers to control expenditure free of charge.<sup>26</sup>

The MCA is proposing to retain the current decision in which the designated undertaking provides the possibility for consumers to be in a position to either block all outgoing calls, or 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.

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<sup>25</sup> SL399.28 Fourth Schedule, Regulation, 28(2) USD 2002/22/EC, Recital 15

<sup>26</sup> SL399.28 Fourth Schedule, Part A (2)

***Proposed 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\*

**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. Calls to "free to caller" numbers should not be barred when technically feasible.**

***4.6.2 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 GO by means of a pre-paid service called 'Easyline'. This service allows subscribers to pay in advance rather than to 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 up-front.

The MCA is proposing that a designated undertaking should continue to provide a pre-paid service allowing subscribers to pre-pay for calls, as in the case of the 'Easyline' service currently being provided by GO.

***Proposed Decision 10***

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

#### **4.7 Quality of Service**

In accordance with the Regulations, 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 services.<sup>27</sup>

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 an *ad hoc* as the need arises.

##### ***Proposed 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*'**

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<sup>27</sup> SL399.28, Regulation 29 (1)

## 5. DESIGNATION OF THE UNIVERSAL SERVICES

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

### ***5.1 Designation Period***

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

#### ***Proposed 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.**

### ***5.2 Criteria for Designation***

The designation methods should ensure that the USOs are fulfilled in a cost effective manner, and the methods employed may be used as a means to determine the net costs of the USOs.<sup>28</sup> As already mentioned earlier, the designation method is also required to be non-discriminatory whereby no undertaking is *a priori* excluded from being designated. These requirements were satisfied in the 2010 Decision by allowing interested undertakings to submit an Expression of Interest for being designated with each component of the universal services.

The primary criteria that the MCA is proposing to 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.

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<sup>28</sup> SL399.28, Regulation 22 (4)

### ***5.2.1 Proven technical competence and expertise***

As specified in the Regulations, the MCA is required to assess the ability of an undertaking to provide all or part of the universal service.<sup>29</sup>

When assessing the technical competence and expertise of an undertaking to provide a universal service, the MCA shall take into consideration any past experience 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 other potential applicants an opportunity. 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.

### ***5.2.2 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, one 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 5.4 of this document.

### ***5.2.3 Characteristics and conditions***

The MCA shall also assess the manner as to how an undertaking would fulfil 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.

### ***5.2.4 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, as well as service continuity and quality, are maintained during the designation period.

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<sup>29</sup> Directive 2002/22/EC, Recital 14

### ***5.2.5 Cost effectiveness and cost efficiency***

Another criterion which shall be considered during the adjudication process is the cost effectiveness and cost efficiency elements when providing part or all of the universal services.<sup>30</sup> 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<sup>31</sup>.

As also established in the 2010 USO decision, the determining factors in assessing cost effectiveness and cost efficiency are:

- 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.

#### ***Proposed Decision 13***

**The main criteria for assessing which undertaking shall 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.**

### ***5.3 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 the date which shall be established once the USO decision is published. 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 5.2. This assessment will be carried out in the shortest timeframe possible but not to the detriment of the mentioned designation prerequisites.

<sup>30</sup> Universal Service Directive 2002/22/EC Recital 14

<sup>31</sup> SL399.28, Regulation 21 (3)

In its decision the MCA shall establish the details of the administrative procedure for submitting an Expression of Interest. The MCA is proposing that the information which shall be submitted with the expression of interest shall include the following:

1. Company background and history;
2. Products and/or services offered;
3. Information on the company individual/s involved in the provision of the universal service/s;
4. Strategy on the provision of the universal service/s;
5. Criteria for designation (listed in Section 5.2 above);
  - a) Proven technical competence and expertise;
  - b) Willingness to provide the service;
  - c) Characteristics and conditions;
  - d) Network Integrity and Service Continuity;
  - e) Cost Effectiveness and Cost Efficiency.
6. Financial requirements on the provision of the universal service/s.

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.

***Proposed 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.**

### ***5.4 Designations in Default of Expressions of Interest***

One needs to take into consideration the likelihood that no undertaking would 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 would designate an undertaking to provide the universal services mentioned in the previous section. 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 sections 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 set criteria.

#### ***5.4.1 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 is thus proposing that GO would be designated 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 5.2. As the designated universal service provider, GO has also been subject to 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.

##### ***Proposed 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*'.**

#### ***5.4.2 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 subscribers' directory-related information for this purpose. The MCA is proposing to 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 5.2.

***Proposed 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.**

***5.4.2 Designation for the provision of public payphones***

GO's public payphones are located throughout the Maltese islands in all localities. Since GO has been providing public payphones for a significant number of years, it is being proposed to designate GO for the provision of 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' at Section 5.2.

***Proposed Decision 17***

**If no expression of interest is 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.**

***5.4.3 Designation for the provision of specific measures for disabled users***

Several measures for disabled users are currently available in the market and GO is amongst the service providers currently providing these services. Considering GO's infrastructure, capacity and experience to provide services to disabled end-users as a universal service for a number of years, the MCA is proposing to 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 5.2, to provide universal service with respect to directory enquiry services for visually impaired users, and also a 'Telecare' type of service.

***Proposed Decision 18***

**If no expression of interest is 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.**

***Proposed Decision 19***

**If no expression of interest is 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.**

***5.4.5 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 is thus proposing to 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 5.2, to provide reduced tariff options.

***Proposed 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.**

***5.4.6 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 is proposing to designate GO in default of expression of interest or in case that an expression of interest fail to satisfy set criteria as defined in the 'Criteria for Designations' Section 5.2.

***Proposed Decision 21***

**If no expression of interest is received by the set timeframe to provide selective 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.**

***Proposed 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.**

## 6. COSTING & FINANCING OF UNIVERSAL SERVICE OBLIGATIONS

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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 determine whether the provision of the universal service obligations has actually resulted in an unfair burden on the undertaking.<sup>32</sup>

### *6.1 Time Period for Requesting Funds*

In the 2010 decision, the MCA had established a timeframe by when a request for funding must be made in order to avoid any commercial and legal uncertainty. The MCA is proposing to retain the same time period; hence by not later than nine months following the end of the financial year an undertaking may submit a written request to the Authority requesting financing for the net costs it suffered in providing the universal service obligations.

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

#### ***Proposed Decision 23***

**Any request for funding shall be received in writing by the MCA by not later than nine 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.**

### *6.2 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 the calculated financial unfair burden. When claiming for the net costs arising from the various components 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.

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<sup>32</sup> SL399.28, Regulation 30 (1), (2)

***Proposed 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.**

### ***6.3 Funding Request Evaluation***

Once a claim for USO funding with all the supporting evidence is received within the established timeframe as stipulated in section 6.2 above, the MCA, or an appointed independent body<sup>33</sup>, 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, as specified in more detail in Part A of the Sixth schedule of the Regulations.<sup>34</sup> 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.

#### ***6.3.1 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 for 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.

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<sup>33</sup> SL399.28 Regulation 30 (7)

<sup>34</sup> SL399.28 Regulation 30 (4)

### **6.3.2 Calculation Phase**

This phase only applies if, 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 enjoyed by the designated undertaking shall also be taken into account.<sup>35</sup>

### **6.4 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 costs, shall be decided on a case by case basis, depending on the nature of the Universal Service in question.

As established in the Regulations 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/ or<sup>32</sup>
- by means of a sharing mechanism between providers of electronic communications networks and services.<sup>36</sup>

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.

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<sup>35</sup> SL399.28, Regulation Part A of Sixth Schedule

<sup>36</sup> SL399.28, Regulation 31 (1)

## 7. SUBMISSION OF RESPONSES

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In accordance with its obligations under Article 4A of the Malta Communications Authority Act [Cap. 418 of the Laws of Malta], the Authority welcomes written comments and representations from interested parties and stakeholders during the national consultation period which shall run from the 5<sup>th</sup> November 2014 to the 5<sup>th</sup> January 2015

The Authority appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state the reasons why the information should be treated as confidential.

For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation on its website, up to three days following the deadline for responses. The Authority will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures<sup>37</sup>. Respondents are however encouraged to avoid confidential markings wherever possible.

All responses should be submitted to the Authority, in writing by no later than 12:00 on 5th January 2015 and be addressed to:

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Extensions to the consultation deadline will only be permitted in exceptional circumstances and where the Authority deems fit. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

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<sup>37</sup> [http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL\\_0.pdf](http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf)