

Local loop Unbundling – Review of GO’s Reference Unbundling Offer

Consultation and Proposed Decision November 2009

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1 INTRODUCTION

1.1 Background

Following the decision on the Market analysis on Wholesale Unbundled Access to the Local Loop published in May 2007 (hereafter 'Market Analysis'), GO plc (hereafter 'GO') has been designated by the Malta Communications Authority (hereafter 'MCA') as having significant market power in the access to the local loop. This Market Analysis was carried out in the context of the European Regulatory Framework for Electronic Communications Networks and Services entered into force in Malta in September 2004. This designation triggered a number of wholesale obligations amongst which access to wholesale unbundled local loops (including shared access) and other facilities, non-discrimination, transparency, accounting separation, price control and cost accounting .

It is pertinent to note that the above-mentioned Market Analysis follows Decision Notice published by the MCA in May 2002 '*Dominant Market Position in Telecommunications: Responses to Consultation and Designations*' wherein Maltacom plc (hereafter 'GO') was designated as having a dominant market position (DMP) in the public fixed telephony market. Subsequently, the *Telecommunications (Unbundled Access to the Local Loop) Regulations 2003* were published whereby the obligation upon notified operators was imposed to publish a reference offer. Further to these Regulations, the MCA issued Notice 173 in the Government Gazette dated February 20, 2004, establishing that GO was to publish a reference offer for unbundled access to its local loops and related facilities (hereafter RUO) by not later than April 30, 2004.

At the time, the MCA undertook a review of the RUO with particular emphasis on the underlying cost structures establishing the RUO prices. An independent review of the costing information relating to the wholesale prices was carried out, with the objective of ensuring that the methodology applied in determining the RUO prices is based on best practice and conforms to the regulatory principles of transparency and cost-orientation.

During the review process, GO continued to update its RUO. These updates have also been reviewed by the MCA.

1.2 Objective of this Consultation

In 2008 the MCA initiated a process of reviewing the current version of GO's RUO with the objective of ensuring that the obligations set forth in the above-mentioned Market Analysis are being adhered to.

For this particular review, the MCA engaged foreign consultants specialized in the field so as to ensure that:

- the conditions stipulated in the RUO are reflective of standard practice elsewhere and
- their hands-on experience in countries where there were LLU service take-up ensures that any stumbling blocks arising from within the RUO are adequately addressed.

The MCA also engaged in a series of discussions with GO in order to ensure the correct understanding of the RUO and the various technical and operational processes described therein. These interactions proved invaluable for the MCA to clearly identify issues requiring MCA's intervention and which are the subject of this consultation document.

This consultation and proposed statement of decision summarises the MCA's initial review of the RUO which focuses amongst others on:

- Provision of Information by GO to the OAO;
- Unbundling Processes;
- Service Level Agreements (SLAs);
- Amendments to clauses including but not limited to the Main Body.

The findings, together with the MCA's proposed changes and additions are being put forward for public consultation in accordance with Regulation 18 of the Electronic Communications Networks and Services (General) Regulations, 2004.

This consultation and proposed statement of decision is without prejudice to any requests to conclude unbundling agreements by access seekers. Any resulting future changes to the RUO will be implemented as proposed in Section 3.

1.3 Focus of the Review

In view of the extensiveness of the Review, the MCA is adopting a phased approach initially focusing on the Full Loop Full Unbundling Service and the Full Loop Shared Access Service. Subsequently, the MCA plans to draw up other consultations with varying scope and terms of reference. These range

from other more specific issues within the realms of Full Loop access services such as the Access Network Frequency Plan (ANFP) to more diverse ones such as those related to sub-loop unbundling and ordering processes amongst others (see Section 9.2 for more details). Besides, the MCA reserves the right to make additional reviews related to any other aspects of the Offer as deemed necessary.

1.4 Description of Service

The "local loop" refers to the physical twisted metallic pair circuit connecting the network termination point at the subscriber's premises to the main distribution point or equivalent facility in the public switched telephone network. A "local sub-loop" is a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephony system.

Local Loop Unbundling (LLU) can be offered as either full-unbundled access or shared access to the local loop. Full-unbundled access allows the provision to "Other Authorised Operators" (OAOs) of access to the local loop or local sub loop of the SMP operator, authorising the use of the full frequency spectrum of the twisted metallic pair.

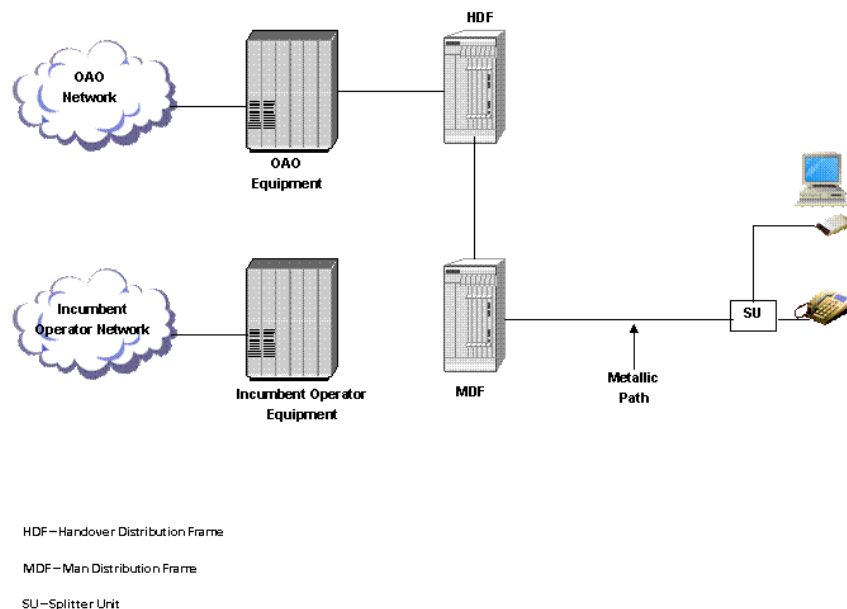
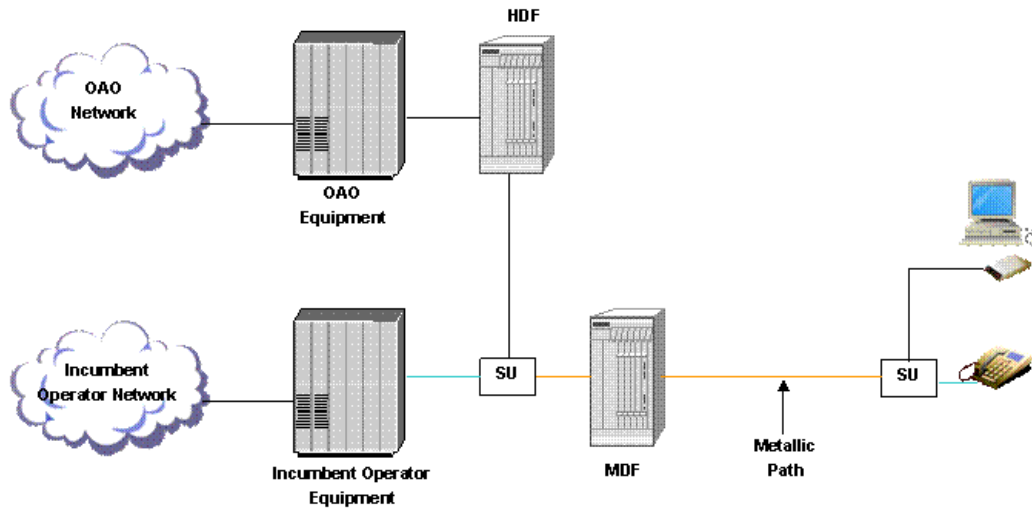


Figure 1: Full Loop Unbundling

On the other hand, shared access to the local loop means the provision to an OAO of access to the local loop or local sub loop of the SMP operator, authorizing the use of the non-voice band frequency spectrum of the twisted metallic pair – in this case the local loop continues to be used for the provision of the telephone service to the public.



HDF – Handover Distribution Frame
MDF – Man Distribution Frame
SU – Splitter Unit

Figure 2: Shared Access

The implementation of LLU has the ultimate aim of enhancing competition and fostering the provision of affordable electronic communications services to end-users.

The minimum list of requirements to be included with respect to Local Loop Unbundling in the RUO is specified in the Fourth Schedule to the Electronic Communications Networks and Services (General) Regulations, 2004 (Chapter 399.28 of the Laws of Malta).

2 STRUCTURE OF THE DOCUMENT

It is the overriding objective of the MCA to ensure that this Consultation Document can be easily followed considering the extensiveness of the issues involved. For ease of reference, the following is an overview of the structure of this Consultation:

- **Section 3** deals with the "Get Started Pack";
Section 3 is meant to clearly stipulate the MCA's position concerning the kick start of agreements between GO and a prospective OAO.
- **Section 4** deals with the *provision of information* by GO to the OAO;
- **Section 5** deals with the *unbundling processes*;
- **Section 6** deals with the *Service Level Agreements*;

The structure within each of the Sections 4 to 6 follows the approach listed below:

1. Reference to the regulatory framework which empowers the MCA to propose the amendments on the issue;
 2. A look at the current RUO insofar as the issue is concerned;
 3. Cross-Comparison with International RUO's – benchmark analysis has been performed on 5 European countries:
 - 3 "big" countries (France, UK and Ireland), which represent a representative sample of European best practices;
 - Luxembourg and Belgium, which are more representative of practices in small countries.
 4. Analysis of the improvements required and supporting arguments thereto;
 5. Proposed Decision.
- **Section 7** deals mainly with proposed revisions to clauses within the Main Body and Annex B of the RUO. The structure for this section is as follows:
 1. Reproduction of the respective clauses from the RUO;
 2. Proposed amendments to the respective clauses;
 3. Reasons for the proposed amendments.
 - **Section 8** includes a proposed decision on the amendments being proposed across the various annexes of the RUO which, for ease of

reference, are contained in the 'Annexes Document' attached to the Consultation Document;

- **Section 9** encompasses any issues not dealt with in the above sections and which will be addressed by the MCA in separate workstreams.
- **Section 10** contains the Consultation Framework wherein the MCA is inviting comments from interested parties on this Consultation and Proposed Decision;
- **Annexes Document:** this document is being attached to this Consultation and Proposed Decision and includes a reproduction of the Annexes (in the same order as in the RUO) where changes are being proposed to address the issues identified throughout the various sections. In all the amended Annexes, except for Annexes G1, G3 and J, the changes being proposed are visibly highlighted thereby enabling interested stakeholders to follow through the changes easily. Such an approach proved impracticable to follow insofar as Annex G1, G3 and J due to their particular nature and therefore these are being reproduced in the proposed format only.

3 'GET-STARTED' PACK

One of the main targets of the MCA is to address any *a priori* stumbling blocks in setting the ball rolling for any prospective OAO. GO maintains a copy of its RUO documentation on its dedicated wholesale portal¹ which requires secure access through a login and password which is available on request to interested parties.

The MCA feels that in accordance with the principle of transparency, the RUO should be made readily available on GO's website and should therefore be accessible to anyone without the need to get any prior authorization. Furthermore, GO shall notify the MCA with the exact location (link) on the Internet page where the RUO is published on GO's website.

In the RUO, GO makes reference to the following agreements/forms which are to be provided by GO once the OAO signs the Non Disclosure Agreement (NDA). These include:

- UALL agreements including UALL Collocation Facility agreement;
- Forms 1, 2 & 3 (see Annex G1, Steps 1, 64 & 104);
- LLU Request Forms mentioned in Annex G2: Generic Collocation Service Order Process; and
- Exchange-related information (see Section 4 for further detail).

These documents are required by GO in order to kick start the associated provisioning process of the services to which the said documents relate. However no timeframes are stated in the RUO by when these documents should be provided to the OAO.

In the absence of explicitly defined timeframes, it follows that the said documents should therefore currently be made available by GO immediately upon demand by an OAO. However in order to minimize the risk of any possible misunderstandings that the lack of stipulated timelines may bring about, the MCA is hereby proposing the following timelines to be followed and included in the RUO:

¹ <http://www.go.com.mt/go/interconnect/>

Proposed Decision #1:

- 1. The RUO is to be made available on GO's website and should be accessible to anyone without the need to get any prior authorization. The MCA should be informed of the exact location (link) on the internet page where the RUO is published on the GO's website;**
- 2. Upon formal communication² made by an OAO making a formal request for unbundling under any of the forms stipulated within the RUO, the parties have to sign the Non-Disclosure Agreement as referred to in the RUO (Annex H). The signing of said Agreement should be made within 1 week from when the OAO makes a formal request as stipulated above;**
- 3. UALL Agreements including UALL Collocation Facility agreements and any forms mentioned in the RUO should be made available instantly upon the signing of the Non Disclosure Agreement (NDA) referred to in point 2 above.**

The MCA is hereby also mandating the above timelines to be inserted in the RUO (see Section 7).

In accordance with the principles of non-discrimination and transparency, it is the MCA's understanding that the terms and conditions governing the provision of LLU services between GO and an OAO should reflect those established by the RUO in force at the time of signing the UALL Agreement.

This notwithstanding, any future changes in the RUO resulting from regulatory procedures or intervention would apply to all parties which have entered into the standard UALL Agreement from the date of coming into force of such changes. This should be carried out in accordance with the review procedure proposed under Section 7 of this Consultation Document.

The MCA therefore believes that any departures in the UALL Agreement from the standard terms and conditions should be kept to a minimum.

² The MCA, under Section 7, is proposing a new clause within the RUO so as to regulate what constitutes a request and/or formal communication between the parties.

4. PROVISION OF INFORMATION TO OAO

4.1 Regulatory Framework

The Electronic Communications Networks and Services (General) Regulations, 2004 (hereafter 'ECNSR') define the different obligations that the MCA may impose on a SMP operator, such as transparency and non-discrimination. Regulation 18 of the ECNSR specifies that "*The Authority may, in accordance with the provisions of regulation 17, **impose obligations for transparency in relation to [...] access, requiring operators to make public specified information, such as** accounting information, technical specifications, **network characteristics**, terms and conditions for supply and use, and prices [...]*

*The Authority may specify the precise **information to be made available**, the level of detail required and the manner of publication."* (page12)

In addition, the Fourth Schedule of the Electronic Communications (Regulation) Act, 2004 details the minimum list of items that should be included in a reference offer for unbundled access to the twisted metallic pair local loop; in particular for collocation services:

- **Information on the exchange sites** (Availability of this information may be restricted to interested parties only, in order to avoid public security concerns);
- **Collocation options at these sites** (including physical collocation and, as appropriate, distant collocation and virtual collocation).

Regulation 19 of the ECNSR specifies that: "*The Authority may, in accordance with the provisions of regulation 17, impose **obligations of non-discrimination, in relation to [...] access.***

*Obligations of non-discrimination shall ensure, in particular, that the operator [...] **provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.***" (page12)

In its decision on the applicable Market Analysis, the MCA concluded that GO enjoys SMP in the provision of wholesale unbundled access to the local loop

services market, and imposed a set of obligations as depicted in Table form below.

Table 1: Obligation referring to provision of information

Remedies	Obligations referring to provision of information
Transparency (Regulation 18)	<p><i>"Maltacom is obliged to comply with its obligation to provide the minimum list of items to be included in a reference offer as set out in the Fourth Schedule to the ECNSR"</i> (page 23)</p> <p>→ Fourth Schedule includes the obligation of providing information on the exchange sites and on Co-location options at these sites</p>
Non-discrimination (Regulation 19)	<p><i>"The MCA believes that such a non-discrimination obligation shall tackle price parameters as well as target non-price parameters, such as the withholding of information, delaying tactics, undue requirements, low or discriminatory quality, strategic design of products, and discriminatory use of information, which would disadvantage competing providers and in turn consumers."</i> (page 23)</p>
Accounting Separation (Regulation 20)	
Access to, and use of, specific network facilities (Regulation 21)	<p><i>"The MCA believes that Maltacom ought to provide information relevant to the access obligation to OAOs"</i> (page 22)</p>
Price control and Cost Accounting (Regulation 22)	

Source: "Wholesale Unbundled Access to the Local Loop: Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies" (3rd May 2007)

4.2 Analysis of current RUO

GO's current RUO provides the location of the exchange sites (Annex I), in the following format:

Number of the site. Name of the site, Road/Street, City

Example: 14. Luqa Telephone Exchange, New Street, Luqa






It also mentions, in the same annex, that detailed information as to the availability of local loops (without any further information) will be available to OAOs at the appropriate price following the signature of a non-disclosure agreement.

4.3 International Practice

For most of the countries surveyed, it appears that more information on the sites is available through a web service and is clearly described in the RUO. In fact, from the benchmarked countries, it transpires that different types of information are available in addition to the site localisation, such as:

- The size of the exchange (number of active lines, number of inactive lines);
- Map of the exchange area, which provide the partitions of the territory according to the coverage areas of the MDFs;
- PSTN number ranges associated with each exchange;
- Types of collocation which are theoretically available on the site (co-mingling, dedicated collocation, virtual collocation, distant collocation);
- Map of the site (not currently a widespread practice in the 5 benchmark countries since this information is only available in 1 country).

Table 2: Provision of information on sites in benchmark countries

					
Mean of information provision	Web service	Web service	Web service	Web service	Web service
Site localization	YES	YES	YES	YES	The RUO does not include as many details as other benchmarked RUOs. It just specifies that the web service provides the exchange list and the geographic numbers per local/sites
Size of the exchange	YES	NO*	YES	NO	
Map of the exchange area	YES	YES, through list of postcodes	YES	YES, through list of postcodes	
Number ranges	NO	YES	YES	NO	
Type of collocation available	NO	YES	NO	YES	
Map of the site	NO	NO	YES	NO	






*information available from third party site such as: <http://www.samknows.com/broadband/>

Source: incumbents RUO, August 2009, 30th

In addition to the above information on sites, incumbents also provide information on lines, such as the length of the lines so that alternative operators can assess the "theoretical" line eligibility to broadband service.

In some countries, such as France, access to this information has been obtained via litigation on non-discrimination (as the incumbent is making use of the information at retail level, it should make it available at wholesale level).

Table 3: Provision of information on lines in benchmark countries

Available information					
<u>Line Length</u>	Yes	Yes	Yes	Yes through a MPF survey	Yes
<u>Information on Eligibility to unbundling</u>	<ul style="list-style-type: none"> • Eligibility of the line 			<ul style="list-style-type: none"> • Eligibility of the line through a MPF survey 	<ul style="list-style-type: none"> • Broadband ability • Availability of a copper pair between the MDF and the end user
<u>Others information</u>		<ul style="list-style-type: none"> • Line electric capacitance* • Network availability in case of non active line 	<ul style="list-style-type: none"> • Line electric capacitance* • Presence of a pair gain system on the line • Line test system: automatic or manual • Exchange of the line 		<ul style="list-style-type: none"> • Technical electric measurements (shared access) • Exchange & SC code

Source: incumbents RUO, August 2009, 30th

4.4 Analysis

Alternative operators need to have available the following relevant information on sites in order to elaborate an efficient LLU roll out strategy:

- Information to evaluate the future revenues of a site:
 - Size of the exchange: as the unbundling of a site of the incumbent access network requires an investment with a high proportion of fixed costs (i.e. costs not linked to the number of unbundling lines), the size of the exchange is a major parameter to assess its profitability. The bigger the exchange site, the easier it will be for alternative operators to achieve a return on investment as they will be able to unbundle more customers in the catchment area of the site.
 - Map of the exchange area: alternative operators need to know the different areas covered by the exchange site to

appropriately target specific areas, such as business centres or residential areas where they expect high demand for their services.

- PSTN number ranges associated with each exchange: In case an alternative operator already has a customer base (e.g. through a bitstream offer), the LLU roll out strategy will depend on the location of its customers. Indeed, it will be easier for the OAO to make a site profitable if it already has many customers to which it can sell LLU based products.
- Information to evaluate the costs of unbundling a site:
 - Types of collocation which are theoretically available on the site: costs incurred for unbundling an exchange site also depend on the type of collocation that the alternative operator uses. As a consequence, the OAO also needs to get information on types of collocation which are *prima facie* available before deciding to unbundle a site.

Information on “theoretical” line eligibility and quality of broadband service is important for the subscription process of alternative operators. This information is readily available to GO's Customer Sales Representatives. If the OAO had to be unable to access the same information with respect to its own potential customers, this would introduce a distortion of competition due to the non-adherence to the principle of non-discrimination: the OAO would not be in a position to inform its customers as thoroughly as GO and the likelihood of customers' dissatisfaction, as a result of not having the service they expected, is higher.

4.5 Proposed Amendments

The regulatory framework clearly imposes the obligations upon GO to provide the types of collocation which are theoretically available on the site (see Fourth Schedule to the ECNSR). As there are a limited number of exchange sites in GO's network, this information can be easily produced, as the MCA has verified through site visits undertaken in the first quarter of 2009. As a consequence, the MCA is of the view that **OAOs should automatically get**

this information from GO upon the signature of a NDA, without the need to order a desktop survey for each site (as currently stipulated in Annex G2).

For the other information on sites (size of the exchange, Map of the exchange area, PSTN number ranges associated with each exchange), the decision on the applicable Market Analysis specifies that GO ought to provide information relevant to the access obligation to alternative operators. The analysis outlined earlier on shows that this information is relevant for the definition of OAO's LLU roll out strategy. The MCA has verified that this information is either already available or can be easily produced. As a consequence, the MCA is of the view that **GO must also provide the size of the exchange, Map of the exchange area as well as PSTN number ranges associated with each exchange upon the signature of an NDA.**

For the provision of information on lines (theoretical line eligibility to broadband service), the decision on the applicable Market Analysis imposes on GO the non-discrimination principle, that is to say that GO has to provide information to alternative operators under the same conditions as it provides for its own services. Theoretical line eligibility to broadband service is available in GO's Retail Outlets (with the prerequisite that the line currently supports a PSTN service), so the MCA is of the view that **DSL eligibility and quality of a line should be made available to alternative operators preferably through a web portal upon the signature of a UALL Agreement.** GO can also propose other alternative forms of disclosing this information given that it serves the purpose of reasonably fulfilling its non-discrimination obligations

GO shall ensure that the above information is kept up-to-date and as accurate as reasonably possible, and in any case shall be reviewed at intervals not exceeding 8 months, and shall provide OAOs with reasonable notice of any significant changes to said information.

Proposed Decision #2:

Having reviewed the regulatory framework and practices, as well as the Reference Unbundling Offers in other jurisdictions which include information on the copper access network, the MCA is of the view that the following information should be available to OAOs, free of charge, upon the signature of a non-disclosure agreement:

- **Size of the exchange: number of inactive lines, number of active lines;**
- **Size A1-Map which broadly partitions Malta's territory according to the coverage areas of the MDFs;**
- **Types of collocation which are theoretically available on the site (co-mingling, dedicated collocation, virtual collocation, distant collocation);**
- **PSTN number ranges associated with each exchange.**

The above information shall be provided by means of a secure access over GO's website. Secure access to this information shall be given to the OAO within 3 working days of the signing of the NDA.

It is important to clarify that the theoretical availability of distant collocation falls outside the powers of GO due to its very nature. However, GO should in this case signal its amenability to accept access to its exchange for the purpose of interconnecting the equipment hosted by the OAO in the distant collocation to the relevant equipment on GO's side.

After the signature of a UALL agreement, information on theoretical eligibility and quality of broadband service over PSTN active line (preferably through a web portal) will be provided to the OAO. This should also be provided free of charge.

For the sake of clarity, the amended Annex I is being reproduced under the Annexes Document. The above proposed decision brings about the need to clarify Clause 1.4 of the Main Body wherein it is stated that upon signing of the Non-Disclosure Agreement (hereafter 'NDA'), GO shall disseminate '*certain types of information*' and that it '*reserves the right to request payment for particular documents*'. For the sake of consistency with the above proposed decision, Clause 1.4 of the Main Body is being proposed for

revision (see Section 7 of this consultation document). The above proposed decision also brings about some slight modifications to Annexes D1, D2 and D3 which are also being reproduced in the Annexes Document.

5. UNBUNDLING PROCESSES

5.1 Collocation Processes

5.1.1 Regulatory framework

In its decision "*Wholesale Unbundled Access to the Local Loop: Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies*" (3rd May 2007), the MCA requested that: "*Maltacom must provide all the above-mentioned access-related remedies in a fair, timely and **reasonable fashion***" (page 22). This obligation is set according to regulation 21 (Access to, and use of, specific network facilities) of the ECNSR.

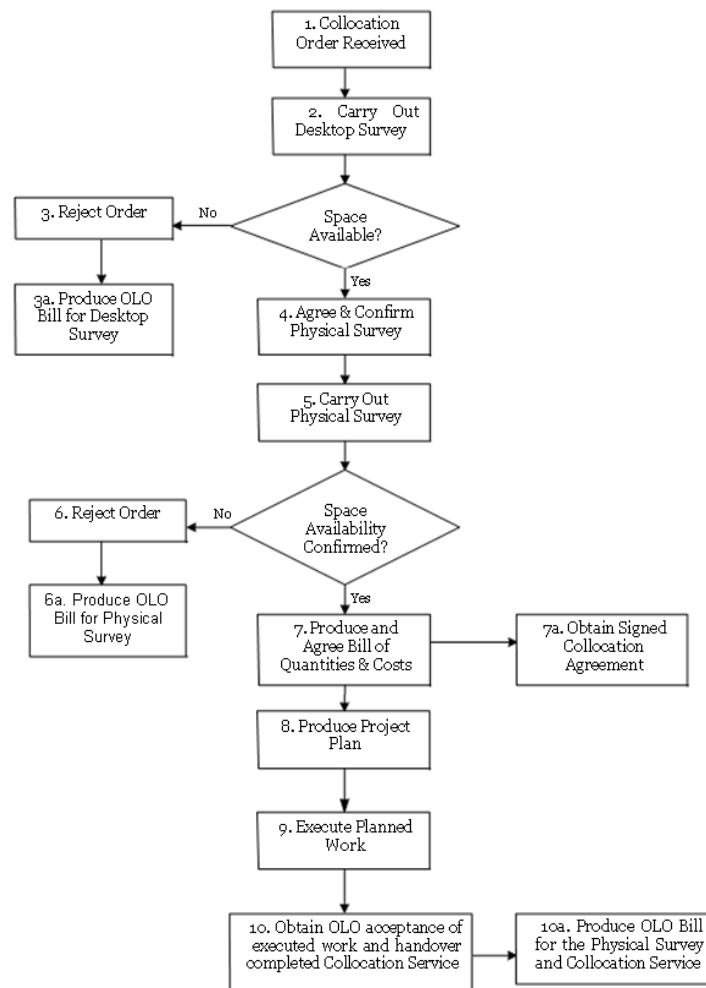
The processes, as described in annexes G1, G2 and G3 of GO's RUO are a means to ensure that this obligation is met.

5.1.2 Analysis of current RUO : Collocation process

5.1.2.1 Current RUO

GO's current RUO provides the description of the collocation process and the associated flowchart in annex G2:

Figure 3: Collocation process – Flowchart



Source: GO's RUO, annex G2

The process includes three "studies":

- The Desktop Survey (step 2), which establishes whether collocation space is available in the exchange site. Nevertheless, the result of the study does not guarantee that collocation space will ultimately be available. The Desktop Survey is carried out using plans, records and strategic proposals from all relevant GO departments and subsidiaries (where necessary, a brief site visit may be required to verify details).
- The Physical Survey (step 5), which establishes whether collocation space is ultimately available. The RUO does not detail how the physical study is carried out, but it just specifies that the survey may be carried out by civil engineering consultants contracted by GO (if necessary).

- The production of a bill of quantities with associated costs and forecast timescales (step 7), which is not included in the Physical Survey. It is only after this production of a bill of quantities with associated costs and forecast timescales that OAO is requested to confirm the collocation order as specified in annex G2 (but not represented in the above flowchart): *“Upon receipt of a signed Collocation Agreement the results of the physical survey will be used by Maltacom to compile a bill of quantities with associated costs and forecast timescales which will be passed on the OLO within 90 working days for agreement.”*

5.1.3 International Practice

Except for Luxembourg, where 2 studies are required, the process for the benchmarked countries includes a unique study (NB: in Ireland, the process includes an initial study and a full study, but the initial study is not compulsory).

In the process of all benchmarked countries, the production of a bill of quantities with associated costs and forecast timescales³ is in the scope of the unique study and does not require additional time to be produced.

5.1.4 Analysis

The proposed decision under Section 4.5 above stated that the types of collocation which are theoretically available on the site (co-mingling, dedicated collocation, virtual collocation, and distant collocation) should be provided to OAOs following the signature of a non-disclosure agreement. It is understood that this would replace the need for a desktop study, which provides theoretical feasibility of collocation facilities. In addition, it can be recalled that benchmarked countries (with the exception of Luxembourg) do not include such a desktop study in their process.

Furthermore, in the collocation process of all benchmarked countries, the production of a bill of quantities with associated costs and forecast timescales is included in the unique study. Indeed, producing this bill of quantities with associated costs and forecast timescales independently of the detailed study introduces additional delay in the process with no objective reason.

³ taking into account when applicable SLAs of the RUO

5.1.5 Proposed Amendments

Proposed Decision #3:

The MCA is proposing the removal of the Desktop Study from the process in view of the fact that this is being replaced by the requirement to provide the necessary information upon the signing of the NDA (see Section 4.5).

In addition, the production of a bill of quantities with associated costs and forecast timescales should be carried out in the scope of a single study, comprising the former physical study and the former production of a bill of quantities with associated costs and forecast timescales.

For the sake of clarity, the amended Annex G2 is being reproduced in the Annexes Document. The removal of the desktop review has also brought about changes to Annexes D1, D2 and D3 as already amplified under Section 4.5. Furthermore, the above proposed decision brings about the service codes 5.1.1 and 5.1.2 stipulated in Annex F redundant.

5.2 Generic MPF facility service order and MPF maintenance processes

5.2.1 Current RUO

Annex G1 and G3 of GO's RUO describe the different processes related to generic MPF facility service order and maintenance (or fault clearance). Annex G1 details the processes involved for the provision of a Metallic Path Facility (MPF) Service. Insofar as the MPF Full Unbundling Service Order Process is concerned, the processes spell out the different instances falling under the full unbundling umbrella as being:

- a) 'MPF Line Transfer'
- b) 'New MPF' and
- c) 'New MPF feasibility'.

To date Annex G1 outlines the various sub-processes individually. As a result it is difficult to follow through the course of a single unbundling scenario.

CURRENT ANNEX G1:	
2. MPF Full Unbundling Service Order Process	
2.1 Sub- processes for initial application and preliminary vetting applicable both to MPF Line Transfer and to New MPF Requests	Steps 1 - 7
2.2 Sub-process for handling of a request for MPF Line Transfer	Steps 8 - 27
2.3 Sub-process to handle a request for New MPF	Steps 28 - 44
2.4 Procedure to establish New MPF feasibility	Steps 45 - 54
2.5 Sub-process for the removal of Maltacom analogue voice service	Steps 55 - 58
2.6 Procedures for line reversion	Steps 59 – 63
3. MPF Shared Access service Order Process	
3.1 Sub-processes for initial application and preliminary vetting	Steps 64 - 70
3.2 Sub-process for handling of a request for Shared MPF	Steps 71 – 88
4 Services common to fully unbundled and Shared MPFs	
4.1 Data filtering and credit control sub-processes	Steps 89 – 95
4.2 Process aborted sub-process	Steps 96 – 99
4.3 Post-Provisioning Processes	Steps 100 – 103
4.4 Procedures for cessation of the UALL Service	Steps 104-112

Table 4: Format of Current Annex G1

Certain issues can also be identified with respect to the details of the current processes described in Annex G1, as shown hereunder:

- 1)** In most of these processes, GO is supposed to send an acknowledgment to OAO once it has checked that the request is valid (Application Form is complete; any up-front charges due have been paid; the OAO has a valid UALL Collocation Facility Agreement for the MDF site specified in the Application Form; the OAO has sufficient Tie Cable / HDF capacity necessary to provision the requested service; there is no payment issues...). Nevertheless:
 - There is no lead time associated to this acknowledgment, so there is a risk for the OAO being warned at a later stage that its request has not been accepted.
 - In addition, no acknowledgement of MPF Fault Report is included in fault clearance process.

- 2) The provision of a MPF facility service or a fault clearance may require an appointment with the end-user. In this case, it is up to GO to conclude the appointment with the end-user and the lead time is suspended. As a consequence, the OAO has no control on the total lead time of the process in the particular case where an appointment with the end-user is required as well as on the interaction between its end user and GO.
- 3) For the full unbundling process, in case where OAO's order requires relief project to be performed, GO informs the OAO, via the Web Portal, that it may only proceed subject to a charge equal to or exceeding item 1.1.3 in the Price Schedule in Annex F. Even if this validation seems necessary to prevent possible abuse, it adds some complexity in the process.
- 4) It is rather difficult to match the process steps as described in annex G1 with the associated SLAs in annex J and the service description in annex C2.

5.2.2 International Practice

A benchmark on Generic MPF facility service order and MPF maintenance processes has been performed on the same 5 European countries as for the collocation process:

- 1) Acknowledgment: except for France, where the acknowledgment is not explicitly described in the RUO, the acknowledgment is foreseen in the Generic MPF facility service order and MPF maintenance processes. The acknowledgment has an associated SLA in two countries:
 - two days lead time is associated to this acknowledgement in the UK process.
 - in Ireland, a one day lead time is associated to a first automatic acknowledgment, and a four days lead time is associated to a second acknowledgment, which validate that the order is valid and that the line is eligible to unbundling.

- 2) Appointment with end user:** there are three benchmarked countries where processes include a procedure for appointment with end-users. In most cases, it is up to the OAO to conclude the appointment, so that it can control the total lead time of the process and remain in a position to inform its own customers on what is going on:
- In France for the fault clearance process, the RUO includes the case where an appointment with the end user is necessary. OAO is in charge of contacting the end user and getting the appointment. The deadline is postponed till the appointment is obtained.
 - In UK for the fault clearance process, the RUO includes the case where an appointment with the end user is necessary. The OAO is in charge of reaching the end-user, but it can ask the incumbent to do it.
 - In Ireland for the MPF provision, if incumbent needs an appointment with end user and cannot get it (3 tries during 2 days), OAO has 5 days to get the appointment.
- 3) The use of a threshold:** amongst the 5 benchmarked countries, UK and Belgium introduce a threshold set by OAO while it makes the order (on a case by case basis). This threshold enables the process to be simplified in case of unforeseen work. If unforeseen work is required, but this work can be achieved at a cost lower than the threshold, then incumbent can proceed with unbundling the line without asking validation to OAO. If the cost associated to the work is higher than the threshold, then the order is rejected.

5.2.3 Analysis

- 1)** There are two different issues on acknowledgment: one for the fault clearance process and one for the MPF provision process.
- Fault clearance process: an automatic acknowledgment should also be introduced in the process so that the OAO will know that the fault clearance has started.
 - MPF provision process: in order to avoid the OAO being informed at a later stage that its request has not been accepted,

a SLA related to acknowledgment could be introduced. Two options are available in this regard; either require an SLA such as that featured in BT's and Eircom's RUOs or include the acknowledgment elapsed time as a KPI. Although the former option does not feature in the majority of the countries surveyed, the latter is constrained by the fact that to date there has not been any take up of the RUO. For this reason an SLA could be deployed initially followed by the relevant KPIs following take up.

- 2) GO's RUO should be modified to give the responsibility of the appointment with end-user to OAO (as in most of benchmarked countries) so that OAO could get a better control on the time required to conclude an appointment with the end-user.
- 3) GO's RUO should introduce a threshold (to be set by OAO on a case by case basis) for the case where OAO's order requires relief project to be performed, in order to simplify the process. This threshold is specified at the Application Stage of a request for a Full Unbundling Service.⁴
- 4) For the sake of clarity the process flows for each case are to be reordered into four self-contained processes (see Table 5). It is also being proposed that any reference to internal processes be removed.

⁴ At the application stage, OAO does not know if the line is related to Case A, Case B or Case C, so it has to fix the threshold. This threshold will not be used in case A and Case B.

PROPOSED ANNEX G1:	
2.1 Sub-process for case A: MPF Line Transfer	Steps 1A -24A
2.2 Sub-process for case B: New MPF with spare capacity between the DP and the MDF	Steps 1B- 20B
2.3 Sub-process for case C: New MPF with no spare capacity between the DP and the MDF	Steps 1C – 20C
3 MPF Shared Access Service Order	Steps 1 – 23
4 Procedures for Line Reversion for Fully Unbundled MPFs	Steps 1 – 5
5 Procedures for Cessation of the UALL Service	Steps 1 – 9

Table 5: Format of Proposed Annex G1

From Table 5, one can easily note that for the sake of clarity, the MCA renamed Cases B and C to enhance clarity. In other words, the MCA is proposing that the three different instances falling under the full unbundling umbrella be referred to as follows:

Case A: MPF Line Transfer (equivalent to 'MPF Line Transfer' in Current RUO);

Case B: New MPF with spare capacity between the DP and the MDF (equivalent to 'New MPF' in Current RUO);

Case C: New MPF with no spare capacity between the DP and the MDF (equivalent to 'New MPF feasibility' in Current RUO).

5.2.4 Proposed Amendments

Proposed Decision #4:

The MCA is of the view that:

- **GO's process in Annex G1 should be restructured to separately capture the 3 possible Full Unbundling cases;**
- **an automatic acknowledgment should also be introduced in the fault clearance process;**
- **an SLA on acknowledgment in the MPF provision process should be introduced with the possibility of relevant KPIs introduced following service take-up;**
- **GO's RUO should be modified to give the responsibility of the appointment with end-user to OAO;**
- **GO's RUO should introduce a threshold (to be set by OAO on a case by case basis) for the case where OAO's order requires relief project to be performed;**
- **GO's process in annex G1 should be streamlined so as to better correspond to annex J (SLA) and annex C2 (service**

description).

For the sake of clarity the proposed amended Annex G1 is being reproduced in the Annexes Document. It is pertinent to note that the proposed decisions outlined above bring about consequent changes to the following annexes:

- Annex C2 which details the service descriptions. The proposed Amended Annex C2 is being reproduced in the Annexes Document;
- Annex F i.e. the Price list: To ensure consistency and enhance clarity, the service descriptions under the following codes under 1.1 in Annex F should read as follows:
 - Service code 1.1.1: Case A: MPF Line Transfer;
 - Service code 1.1.2: Case B: New MPF with spare capacity between the DP and the MDF;
 - Service code 1.1.3: Case C: New MPF with no spare capacity between the DP and the MDF.

6 SERVICE LEVEL AGREEMENT

6.1 Regulatory framework

The remedies imposed on GO under MCA's decision on the relevant Market Analysis include SLAs associated with the different unbundling services:

Table 6: Obligations referring to SLAs

Remedies	Obligations referring to provision of information
Transparency (Regulation 18)	<i>Such offers [RUO] are to be sufficiently unbundled, include pricing, terms and conditions and service level agreements, as established in the above access obligations and as may be directed by the MCA according to law (page 23)</i>
Non-discrimination (Regulation 19)	<i>A cardinal remedy aimed at defeating the competition problems resulting from vertical foreclosure is that of non-discrimination in the provision of access and, or interconnection. In accordance with Regulation 19 of the ECNSR, Maltacom, as the vertically integrated provider, is obliged to:</i> <ul style="list-style-type: none"> <i>a) apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and</i> <i>b) provide services and information to others under the same conditions (including timescales, on a basis and of a quality) equivalent to that which it provides to its own services, or those of its subsidiaries or partners.(page 22)</i>
Accounting Separation (Regulation 20)	
Access to, and use of, specific network facilities (Regulation 21)	<i>“The provision of Service Level Agreements by Maltacom to OAOs is especially considered indispensable with respect to the provision of access to the local loop, as it provides OAOs with certainty as to the supply and repair of the wholesale input and hence allows them to compete on a downstream level.</i> <i>Maltacom must provide all the above-mentioned access-related remedies in a fair, timely and reasonable fashion” (page 22)</i>
Price control and Cost Accounting (Regulation 22)	

Source: "Wholesale Unbundled Access to the Local Loop: Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies" (3rd May 2007)

6.2 Analysis of current RUO

6.2.1 Current RUO

In Annex J, GO's current RUO provides the SLAs associated to the different services, both in terms of the lead times as well as associated penalties.

6.2.1.1 Full unbundling service provisioning process

For Full unbundling service provisioning process, there are 9 different SLAs:

Table 7: Full unbundling service provisioning process - SLAs

Service Code	Service	Lead Time (Working days)	Penalty per working day (Lm)
1.1.1	Full Unbundling Service Line Transfer		
1.1.1.1	Passed Prequalification Test	8	Lm 2.30 capped at Lm 23
1.1.1.2	Requiring Unequipping Pair Gain	11	Lm 2.30 capped at Lm 23
1.1.1.3	Requiring Lead in replacement	11	Lm 2.30 capped at Lm 23
1.1.1.4	Requiring Cable Fault rectification	18	Lm 2.30 capped at Lm 23
1.1.2	Full Unbundling Service Provision where infrastructure currently exists	20	Lm 5.10 capped at Lm 51
1.1.3	Full Unbundling Service Provision involving limited rearrangement (up to 20 man hours)	38	Lm 9.55 capped at Lm 191
1.1.5	Full Unbundling Service Reversion	5	Lm 1.50 capped at Lm 15
1.1.6	Full Unbundling Service Disconnection	2	Lm 1.40 capped at Lm 14
1.1.7	Full Unbundling Service Pair Diversion	4	Lm 2.40 capped at Lm 24

Source: GO's current RUO (annex J)

6.2.1.2 Shared access service provisioning process

For the shared access service provisioning process, the SLAs are:

Table 8: Full unbundling service provisioning process - SLAs

Service Code	Service	Lead Time (Working days)	Penalty per day (Lm)
2.1.1	Shared Access Service Provision		
2.1.1.1	Passed Prequalification Test	5+3	Lm 1.70 capped at Lm 17
2.1.1.2	Pair Swapping or Lead in replacement required	8+3	Lm 1.70 capped at Lm 17
2.1.1.3	Requires Cable Fault rectification	15+3	Lm 1.70 capped at Lm 17
2.1.2	Shared Access Service Reversion of Service	2+3	Lm 2.00 capped at Lm 20
2.1.3	Shared Access Service Pair Diversion	4	Lm 2.40 capped at Lm 24
2.1.4	Shared Access Service Pair Disconnection	2	Lm 1.00 capped at Lm 10

Source: GO's current RUO (annex J)

6.2.1.3 *Fault clearance process*

For the fault clearance, the SLAs are:

Table 9: Fault Clearance - SLAs

Service Code	Service	Lead Time (Days)	Penalty per day (Lm)
1.2.1	Full Unbundling Service Fault Rectification		
1.2.1	Line Fault	4	Lm 5.10 capped at Lm 51
1.2.2	Cable fault	10	Lm 5.10 capped at Lm 51
1.2.3	Full Unbundling Service MPF Testing When No Fault Found	4	Lm 1.10 capped at Lm 11

Source: GO's current RUO (annex J)

6.2.1.4 *Collocation provisioning process*

For the collocation provisioning process, SLAs are provided:

- in Annex G2 for the studies, the building work and the facilities service provision:
 - 30 working days for the desktop survey;
 - 90 working days for the physical survey;
 - 90 working days for the production of a bill of quantities with associated costs and forecast timescales;

As a result, the global lead time between a desktop survey order and a final collocation order is of 210 working days.

In addition, no lead times are provided for the building work: the process merely includes 30 working days for the production of the detail project plans.

- o In annex J the provision of tie cables (both internal and external) is subject to a minimum lead time contained between 104 and 121 working days (depending on the case).

Table 10: Internal and external tie cables - SLAs

Service Code	Service	Lead Time (Working days)	Penalty per day (Lm)
3.3.1.1	Internal Tie Cable - First 100 pair cable 100m(or under) terminated at both ends	119	Lm 160 capped at Lm 4800
3.3.1.2	Internal Tie Cable Additional 100 pair cable for each 100m (or under) terminated at both ends	104	Lm 35 capped at Lm 1057
3.3.1.3	Internal Tie Cable - Additional First 100 pair cable over 100m	16	Lm 130 capped at Lm 3908
3.3.1.4	Internal Tie Cable Additional 100 pair cable over 100m	1	Lm 1.64 capped at Lm 164

Service Code	Service	Lead Time (Working days)	Penalty per day (Lm)
3.4.1.1	External Tie Cable 400 pair First 400m Connection terminated at both ends, inc MDF (excl HDF at OLO)	121	Lm 258 capped at Lm 8456
3.4.1.2	External Tie Cable 600 pair First 400m Connection terminated at both ends, inc MDF (excl HDF at OLO)	121	Lm 370 capped at Lm 10976
3.4.1.3	External Tie Cable First 800 pair First 400 m Connection terminated at both ends, inc MDF (excl HDF at OLO)	121	Lm 430 capped at Lm 12874
3.4.1.4	Additional 400m of 400 pair	15	Lm 160 capped at Lm 4742
3.4.1.5	Additional 400m of 600 pair	15	Lm 180 capped at Lm 5324
3.4.1.6	Additional 400m of 800 pair	15	Lm 185 capped at Lm 5356

Source: GO's current RUO

6.2.2 International Practice

6.2.2.1 SLAs associated to full unbundling service provisioning process

The SLAs associated to the MPF line transfer are quite competitive in Malta (from 8 working days for case 1.1.1.1 (see table 7) to 18 working days for case 1.1.1.4 (see table 7)) compared to benchmarked countries: 7 working days in France, 10 in UK, 16 in Belgium, 20 in Luxembourg and 24 in Ireland).

For the case 1.1.2 (see table 7), the 20 working days of Malta are close to small countries, such as Belgium (16 working days) and Luxembourg (also 20 working days), and better than Ireland (24 working days).

6.2.2.2 Shared access service provisioning process

The SLAs associated to the shared access service provisioning process are quite competitive in Malta:

Table 11: International benchmark - SLAs for shared access service provisioning process (in working days)







						
Shared MPF without construction	4	7	10	10	19	8
In case of non planned problem (ex : cable diversion)	4	30	10	No lead time	19	+3 or +10 or +13

Source: incumbents RUOs, August 2009, 30th

5.2.2.3 SLAs associated fault clearance process

The SLAs for the fault clearance process without the business option range from 40 hours in UK to 3 days in Ireland. GO's SLAs are even higher than the benchmark values.

Table 12: International benchmark - SLAs for fault clearance process

						
Normal lines	40 hours	2 working days	2 working days	2 working days	3 working days	4 working days or 10 working days
Lines with enhanced SLA	20 hours	4 hours	4 hours	4.5 hours		

Source: incumbents RUOs, August 2009, 30th

6.2.2.4 SLAs associated to collocation provisioning process







Luxembourg is the only benchmarked country where an initial study is compulsory. The lead time associated to this study is 5 working days compared to the 30 working days featured in GO's RUO).

For the full study, the lead times range between 2 weeks (Belgium) and 40 working days. This study also includes the production of a bill of quantities with associated costs and forecast timescales. Thus these lead times should be compared with the 180 (90 + 90) working days of GO's RUO.

For the building work (which includes facilities service provision), there are lead times for 3 of the 5 benchmarked countries, from 4 weeks to 90 working days.

In some cases (example, for co-mingling in France), these lead times may be modified in case of unforeseen work.







Table 13: International benchmark - SLAs for the studies, the building work and the facilities service provision

						
Initial study				5 working days		30 working days
Full study (including production of a bill of quantities with associated costs and forecast timescales)	2 weeks	From 2 to 8 weeks	30 working days	4 weeks	From 30 to 40 working days	90 working days + 90 working days
Co-mingling works	From 2 to 2,75 months	From 4 weeks to 4 months	60 working days	Bespoke	Bespoke	Bespoke
Dedicated works		From 4 to 10 weeks	90 working days			

Source: incumbents RUOs, August 2009, 30th

For the tie cables, in one of the clarifications given by GO, the company mentioned Malta's specific size limitations as the main reason for high lead times. Consequently, the MCA surveyed the Gibtelecom's (of Gibraltar) RUO in order to have a value from country of comparable size. The SLAs are between 15 working days to 45 working days for the 5 benchmarked countries (to be compared to the 104-121 working days in GO's RUO). For Gibraltar, the SLA is 10 working days, but this lead time starts running when the building work is over.

Table 14: SLAs for the tie cables

						
Internal without work	15 working days	21 working days	35 working days	9 weeks		119 wd for the first 104 wd for the following
Internal with work	40 working days	21 working days	35 working days	9 weeks		119 wd for the first 104 wd for the following
External without work	15 working days	35 working days	35 working days			121 working days
External with work	40 working days	35 working days	55 working days			121 working days

Source: incumbents RUO, August 2009, 30th

6.3 Analysis

6.3.1 Shared access service provisioning process

Compared to the benchmarked countries, the SLAs associated to the shared access service provisioning process are quite competitive in Malta.

6.3.2 Fault clearance process

For the fault clearance process, the wholesale SLAs are the same as the retail SLA (4 working days for a line fault, 10 working days for a cable fault), so that the non-discrimination obligation is verified. Nevertheless, the wholesale SLAs are much higher than the ones in all the benchmarked countries:

- The SLA in Ireland (which has the highest SLA of the benchmark) is 3 working days.
- The SLA for the most favourable case in Malta (line fault) is 4 days.

As a consequence, the MCA is of the view that the wholesale SLAs associated to fault clearance process should be reduced to 3 working days for line fault (in order to be at the same level as in Ireland) and to 8 working days for a cable fault.

6.3.3 Collocation provisioning process

For the collocation process:

- The proposed decision under Section 4.5 would result in the types of collocation which are theoretically available on the site being provided to OAOs following the signature of a non-disclosure agreement and that this would substitute the desktop study. As a consequence, GO's revised RUO does not need to include any SLA for desktop survey anymore.
- For the physical survey, the SLAs in the benchmarked countries range from 2 weeks to 8 weeks (i.e. close to 2 months). As a consequence, the MCA is of the view that the SLA associated to physical survey should be reduced to 40 working days.
- For the provision of production of a bill of quantities with associated costs and forecast timescales, the analysis suggests that this should be included in the physical survey. As a consequence, GO's revised RUO does not need to include any SLA for the provision of production of a bill of quantities with associated costs and forecast timescales anymore. The MCA believes that the timescale for the execution of the works should be lower or equal to 60 working days, except in case where exceptional work is required in which case GO has to justify the reasons for any required extension to the timescales.
- For the tie cables, the MCA is of the view that the SLA should be reduced to 40 working days. Insofar as internal tie cables are concerned, these 40 working days should include the full provisioning of the tie cable i.e. without the SLA being disaggregated between the first 100 metres and the additional 100 metres. This is in view that in the detailed physical survey, GO shall establish the space available for co-mingling/dedicated/virtual collocation and therefore the area where the equipment of the OAO will be hosted will be determined, together

with the need for any cable trays. Consequently GO shall know the number of metres required in tie-cables. Hence, should the results of the physical survey conclude that more than 100 metres are required, GO shall ensure that said quantity be provisioned. This is also in line with the MCA's proposal that the lead times for the tie-cable provisioning shall start from the signing of the Formal Collocation Agreement (i.e. Step 4 of the new proposed Collocation Process referred to in Annex G2 (see Annexes Document)). It is pertinent to note here, that in case where the OAO requests multiple 100 pair cables, the lead times shall run in parallel.

- For the internal tie cable fault rectification, the MCA believes that the same approach should be adopted in that the lead times should be redefined in a manner so as to cover the whole length of the internal tie-cable provisioned. Accordingly, the MCA is of the view that the disaggregation between the first 100 metres and the additional 100 metres be eliminated as far as internal tie-cables are concerned.
- Insofar as the external tie cables are concerned, it is the MCA's view that the first 400 metres will have to be provisioned within 40 working days and to leave the current disaggregation between the first 400 metres and additional 400 metres due to the specific nature of the work involved. However for the additional metres, the MCA believes that the 15 working days need to be downwardly revised to 10 working days.
- For the external tie cable fault rectification, the MCA is of the opinion to leave the disaggregation between the first 400 metres and the additional 400 metres in view of the specific nature of the works that may arise as a consequence of the lengths involved.

6.4 Proposed Amendments

Proposed Decision #5:

The MCA is of the view that:

- **the SLAs associated to MPF line transfer (full unbundling service provisioning) should remain unchanged but a threshold of 20 days should be introduced even in case of multiple problems (ex: pair gain + cable replacement);**

- **the SLAs associated to the shared access service provisioning process should remain unchanged but a threshold of 20 days should be introduced even in case of multiple problems (ex: pair gain + cable replacement);**
- **the SLAs associated to fault clearance process should be reduced to 3 working days for line fault and to 8 working days for a cable fault;**
- **the SLA associated to physical survey should be reduced to 40 working days;**
- **the physical survey should include the provisioning of the bill of quantities;**
- **the SLA associated to the execution of the works should be lower or equal to 60 working days;**
- **the SLA associated to tie cables provisioning should be reduced to 40 working days;**
- **the SLA associated to internal tie cable fault rectification should cover the full length of the tie-cable provisioned.**

For the sake of clarity, the amended Annex J is being reproduced in the Annexes Document. In view of its very nature, only the proposed format is being reproduced.

7 AMENDMENTS TO SPECIFIC CLAUSES OF THE RUO

Apart from the changes proposed throughout the above Sections, the MCA is also proposing a number of amendments which are in their majority targeted at the Main Body and Annex B of GO's RUO. Such amendments are aimed at promoting the equitable share of rights and obligations between the parties.

Proposed Decision #6:

The MCA proposes to direct that the respective clauses in GO's RUO be revised forthwith as specified in Table 15 below. Following the publication of a Decision by the MCA, GO shall affect the changes as mandated therein within 2 weeks from its publication. These amendments shall be applied to all unbundling agreements which may have been concluded in accordance with the review clause.

Table 15: Amendments to Specific Clauses

A: AMENDMENTS TO CERTAIN TERMS AS MENTIONED IN THE RUO:

Proposed changes:

'Maltacom' to be replaced with 'GO';

'OLO' to be replaced with 'OAO';

Prices in LM to be reinstated in € equivalents;

'working day' : any day other than Saturdays, Sundays and public holidays in Malta.

B: REFERENCE TO LEGISLATION

Current RUO:

Legislation currently referenced on the cover page of each Annex:

This Reference offer for unbundled access to Maltacom's local loops and related facilities is published in accordance with Regulation 4 of the Electronic Communications (Unbundled Access to the Local Loop) Regulations as per Legal Notice 45 of 2003. This regulation transposes Article 3 of the Regulation on Unbundled Access to the Local Loop (Regulation (EC) 2887/2000).

Undertakings are advised that the Malta Communications Authority may

impose changes to this Reference Offer in accordance with its powers under Regulation 7 of above mentioned Legal Notice (the said regulation 7 transposes Article 4 of Regulation (EC) 2887/2000).

Main Body Clause 1.1:

This Reference Unbundling Offer ("RUO") is being made in accordance with the provisions of L.N. 45 of 2003 entitled Telecommunications (Unbundled Access to the Local Loop) Regulations, 2003 made under the Telecommunications (Regulation) Act 1997.

Proposed Text:

On The Cover page of each Annex:

This Reference offer for unbundled access to GO's local loops and related facilities is published in accordance with Regulation 18(4) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta). This regulation transposes Article 9(4) of the Access Directive (DIRECTIVE 2002/19/EC).

Undertakings are advised that the Malta Communications Authority may impose changes to this Reference Offer in accordance with its powers under Regulation 18(2) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta) which transposes Article 9(2) of the Access Directive (DIRECTIVE 2002/19/EC).

Main Body Clause 1.1:

This Reference Unbundling Offer ("RUO") is being made in accordance with Regulation 18(4) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta).

Reason for the change:

To reflect the revised Legislation.

C: COMMUNICATION BETWEEN GO AND OAO

Current RUO:

There is no detail in the current RUO that clarifies how the communication is to be affected.

Proposed Text:

To be inserted in Main Body:

Any notice or other form of communication required to be given by one Party to the other under this agreement shall be in writing and shall be deemed duly served if:

(a) delivered personally by hand during office hours: at the time of actual delivery; or

(b) sent by facsimile: upon its receipt being confirmed, provided that such receipt takes place on a working day; or

(c) sent by registered post (return receipt to be requested): three (3) working days after the day of posting; or

(d) sent by electronic mail: upon receipt in terms of the Electronic Commerce Act, Cap.426 of the Laws of Malta.

Provided that, until such time as the coming into force of a web portal for use in relation to Annexes G1, G2, G3 and G4, any communication required in the execution of the processes detailed in said Annexes will be by means of communication detailed in either (b) or (d) as agreed by the parties, in which case both parties are to provide each other with the fax number or e-mail address (whichever the case) to use in such instances. The lead times stipulated in Annex J in relation to Annexes G1, G2, G3 and G4 will be time stamped upon the date of receipt of such communication.

Except where otherwise specifically provided, all notices and other communications between the parties relating to this RUO shall be in writing and shall be addressed to:

GO:
The Group Chief Executive Officer
GO p.l.c;
Spencer Hill,
Marsa MRS 1950
Fax no:
E-mail:

Operator:

[Designation]
[Address]
[Fax No.]

[E-mail]
<u>Reason for the change:</u> To clarify what constitutes communication between the parties.
D: ESTABLISHING TIMELINES FOR ACCESS TO INFORMATION
<u>Current RUO:</u> There are no timelines established. <u>Main Body Clause 1.4:</u> The dissemination of certain types of information by Maltacom shall be subject to the prior signing by the OLO of the Non-Disclosure Agreement at Annex H. Maltacom reserves the right to request payment for particular documents. Following the conclusion of the Non-Disclosure Agreement between Maltacom and the OLO, Maltacom may provide the requested information through secure access over a Maltacom website. Information about how to access the secure website will be given after the Non-Disclosure Agreement at Annex H has been signed and any necessary payments made.
<u>Proposed Text:</u> GO is bound to entertain the following requests by the timelines stipulated hereunder: <ol style="list-style-type: none">1. Upon a formal request for unbundling made by the OAO under any of the methods stipulated within the RUO⁵, the parties will sign the Non-Disclosure Agreement as referred to in Annex H. The signing of said Agreement will be made within 1 week from when the OAO makes a formal request as stipulated above;2. UALL Agreements including UALL Collocation Facility agreements and any Forms in the RUO will be made available instantly upon the signing of the Non Disclosure Agreement (NDA) referred to in point 1 above.3. GO shall provide the information contained in Annex I through secure access over GO's website. Timelines for the submission of said information is as stipulated in Annex I. GO reserves the right to

⁵ As per Communication Clause proposed

request payment for information requested by the OAO which is not included in Annex I. GO shall not delay access to the information at Annex I by reason of non-payment for other information.

Failure from the part of GO to adhere with the above stipulated timelines would constitute a breach of its obligations to provide access; provided that if GO deems that any request for confidential information is not a genuine request, GO may request the Authority's intervention prior to allowing access to such information. The Authority's decision following such intervention shall be final and binding, subject to the possibility of appeal.

In order for an interested party to make a formal request for unbundling, the party must be in possession of the applicable authorisations in line with the local regulatory framework to operate as a provider of electronic communications services.

Reason for the change:

- To introduce the timelines for the setting in motion of the agreement between the parties;
- To clarify that information listed in Annex I (as revised – see Annexes Document) will be provided free of charge and the manner and timeframe in which such data will be made available;
- To clarify that any information requested by the OAO which is over and above that listed in Annex I may attract a charge.

E: AMENDMENTS

Current RUO:

Terms and Conditions Annex B Clause 18: Amendments

Maltacom reserves the right to amend any document making up this RUO as well as any UALL Agreements entered into with the OLO at any time in its sole discretion, subject to regulatory obligations under applicable legislation.

Main Body: Clause 1.2

The prices, terms and conditions of the RUO are subject to change either by Maltacom in its sole discretion or as requested by the MCA, in accordance with applicable EU and Maltese legislation. Any changes will be published accordingly.

Proposed Text:

To remove text spelt about under Clause 1.2 and

Annex B Clause 18: To be renamed and amended as follows:

18. Amendments to RUO and Review of UALL Agreements

18.1 The Authority reserves the right to affect any amendments it deems fit to any of the terms and conditions stipulated in the RUO in accordance with its powers under Regulation 18(2) of the Electronic Communications Network and Services (General) Regulations (Chapter 399.28 of the Laws of Malta).

18.2. Any party to an existing UALL agreement shall be entitled, upon request to the other party in accordance with clause 18.3, to obtain the terms and conditions included in the most recent version of the RUO published from time to time.

18.3. A Party may seek to amend this Agreement by serving on the other a review notice if:

18.3.1. either Party's General Authorisation is materially modified ; or

18.3.2. a material change occurs in the law or regulations governing electronic communications in Malta or the EU; or

18.3.3. This Agreement makes express provision for a review or the Parties may agree in writing that there shall be a review; or

18.3.4. A material change occurs, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement;

or

18.3.5 There is a review of the RUO by the Authority;

18.3.6. There is a material change to the terms and conditions of any UALL and/or Collocation Agreement.

18.4. A review notice shall set out in reasonable detail the issues to be discussed between the Parties.

18.5. Save for the provisions of the UALL and/or Collocation Agreement, a Party may initiate a general review of this Agreement at least once during the twelve month period beginning from the Commencement Date of this Agreement and subsequent anniversary. However, provided a Party complies with Clause 18.4, a review may be initiated as deemed appropriate by either Party serving a review notice.

18.6. On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.

18.7. For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.

18.8. If the Parties fail to reach agreement on the subject matter of a review notice within 1 calendar month (the relevant period) in each case from the date of service of such review notice, either Party shall follow the dispute resolution procedure stipulated in Clause 20.5. The Authority shall endeavour to determine:

18.8.1. the matters upon which the Parties have failed to agree;

18.8.2. whether this Agreement should be modified to take account of such matters; and, if so

18.8.3. the amendment or amendments to be made.

The Parties shall enter into an agreement to modify or replace this Agreement in accordance with what is agreed between the Parties to conform to the determination of the MCA.

18.9. Any amendments and supplements to this Agreement, including its Annexes, Appendices and Service Schedules shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendment and supplements shall not affect the validity or enforceability of any of the remaining provisions of this Agreement.

Reason for the Proposed Change:

To introduce a review clause and to ensure that any changes to the agreements are always updated in a formal and unambiguous manner.

F: QUALITY OF SERVICE GUARANTEE

Current RUO:

Main Body Clause 1.2

... Maltacom will not be responsible for the quality and content of the communications transmitted through the Network and other facilities to which UALL would have been granted.

Proposed text:

GO will not be responsible for the content of the communications transmitted through the Network and other facilities to which UALL would have been granted.

GO shall at all times offer to the OAO the same quality of service offered internally in accordance with the non-discrimination obligations arising under Regulation 19(2)(b) of the Electronic Communications Networks and Services (General) Regulations of 2004 and as mandated in the Market Analysis on

Wholesale Unbundled Access to the Local Loop published in May 2007.

Reason for the Proposed Change:

To ensure equivalence of service by GO according to its non-discrimination obligations.

G: CHARGES NOT ESTABLISHED A PRIORI

Current RUO:

Annex B Clause 6.1:

In regard to all other Services for which no charge is specifically indicated in the RUO Price List, such Services shall, unless the contrary is otherwise expressly stated, be subject to bespoke charges. Such bespoke charges will be provided by Maltacom to the OLO on an ad hoc basis.

Proposed Text:

Services for which no charge is specifically indicated either in the RUO Price list or made reference to in the Annexes may be subject to bespoke charges unless the contrary is otherwise expressly stated. Such bespoke charges will be provided by GO to the OAO within 15 working days of the OAO's request for such information. It is understood that any such request for the bespoke charges shall not be interpreted as binding the OAO to request the relative service to which such bespoke charges relate.

The charges should include only efficiently incurred costs which are consistent with the principles of cost causality, transparency and non-discrimination. Should no agreement be reached between the parties within 15 working days from receipt by the OAO of the bespoke charge in question, a dispute is deemed to have arisen and the Dispute Resolution procedure described in Clause 5 shall be followed.

Reason for the Proposed Change:

- To clarify that all charges, whether bespoke or otherwise, are subject to the principles of cost orientation and non-discrimination;
- To establish the procedure that is to be followed if agreement is not reached between the parties.

H: MINIMUM UNBUNDLED LOOPS

Current RUO:

Main Body Clause 1.2

The OLO shall guarantee that by the end of the first year from the commencement date of the UALL Agreement(s), and annually thereafter, the OLO shall request Maltacom to unbundle a minimum of 1,500 local loops. For the avoidance of doubt, the minimum annual charge payable to Maltacom by the OLO for UALL Services shall be equivalent to the charge for 1,500 requests for UALL Services.

Annex B Clause 4.2

The OLO shall guarantee that by the end of the first year from the commencement date of the UALL Agreements, and annually thereafter, the OLO shall request Maltacom to unbundle a minimum of 1,500 local loops (whether by requesting Full Unbundling Service or Shared Access Service). For the avoidance of doubt, the minimum annual charge payable to Maltacom by the OLO for UALL Services shall be equivalent to the charge for 1,500 requests for UALL Services.

Proposed Text:

Both instances shall read:

The OAO shall guarantee that by the end of the first year from the date of formal acceptance by the OAO of the executed works of the first unbundled MDF, and annually thereafter, the OAO shall have a minimum of 1,500 unbundled local loops. For the avoidance of doubt, the minimum annual charge payable to GO by the OAO for the UALL Services shall be equivalent to the shared access rental annual charge for 1,500 unbundled local loops.

Reason for the Proposed Change:

To clarify that the minimum annual charge is of 1500 loops and the charge applicable.

I: BREACH, SUSPENSION AND TERMINATION

Current RUO:

Annex B Clause 11:

11.1 If the OLO's Network or equipment adversely affects the normal operation of Maltacom's Network or equipment, or is a threat to any person's safety, Maltacom may suspend, to the extent necessary, such of its obligations under the UALL Agreements, and for such period as it may

consider reasonable to ensure the normal operation of its Network or equipment or to reduce the threat to safety.

11.2 If the OLO shall be in breach of a material obligation under the UALL Agreements, Maltacom shall have the option to terminate the UALL Agreements forthwith, and this without the need of any authorisation or confirmation by any court or authority.

11.3 The UALL Agreements may also be terminated by Maltacom by written notice forthwith if the OLO:

- (a) is unable to pay its debts; or
- (b) ceases to carry on business; or
- (c) has a liquidator or an administrator appointed; or
- (d) has an order made or a resolution passed for its winding up.

11.4 The UALL Agreements shall also terminate:

11.4.1 in the event that the OLO ceases to hold a licence or equivalent to provide telecommunications services and systems granted to it pursuant to applicable legislation; or

11.4.2 in the case of Shared Access Service, if the User cancels his voice telephony subscription with Maltacom; or

11.4.3 in the case of Shared Access Service, if the User fails, within the stipulated period, to settle any outstanding debts that such User may have with Maltacom. In any such circumstances, Maltacom shall resume provision of the Shared Access Service, upon a request made to it by the OLO, following payment by the User of all the said outstanding debts. All costs incurred in such disconnection and reconnection shall be fully borne by the OLO; or

11.4.4 in any other manner contemplated by the termination provisions of the UALL Agreements.

11.5 Upon termination or expiry of the UALL Agreements, the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery by each Party of any equipment or apparatus supplied by the other Party (even where that equipment or apparatus is on the premises of the other Party).

11.6 On termination or expiry of the UALL Agreements either Party shall be entitled after reasonable prior notice in writing to the other Party to enter the premises of the other Party for the purposes of carrying out necessary disconnection works and repossessing any plant, equipment or apparatus of that Party or a Third Party installed by or for that Party. The Party on

whose premises such plant equipment or apparatus was installed shall be responsible for compensating the other for any such plant equipment apparatus or things belonging to the other or such Third Party which are not so delivered in good condition (fair wear and tear excepted) and the Party carrying out such disconnection works shall indemnify the other Party in respect of any damage thereby caused to the premises fixtures and fittings, apparatus and equipment of such other Party. Neither Party shall be responsible for any damage to plant, equipment or apparatus belonging to the other Party which has been caused by any negligence or failure to perform necessary or timely maintenance by such other Party or by a Third Party.

11.7 Termination or expiry of the UALL Agreements shall not be deemed a waiver of a breach of any term or condition of the said UALL Agreements and shall be without prejudice to either Party's rights, liabilities or obligations that would have accrued prior to such termination or expiry.

11.8 Notwithstanding the termination or expiry of the UALL Agreements, the preceding sub-clause and Clauses 12, 13 and 15 shall continue in full force and effect.

11.9 Maltacom's right to terminate or suspend performance of the UALL Agreements pursuant to this Clause is without prejudice to any other rights or remedies available to either Party at law.

Proposed Text:

11.1 If one Party's Network adversely affects the normal operation of the other Party's Network, or is a threat to any person's safety, the other Party may suspend, to the extent necessary, such of its obligations hereunder, and for such period as it may consider reasonable to ensure the normal operation of its Network, or to reduce the threat to safety, provided that the Party being suspended shall have right of recourse to the Authority if it feels that such suspension was unjustified in the circumstances.

11.2 If either Party is in breach of a material obligation under UALL Agreement and such breach is capable of remedy, the other Party ("the Terminating Party") shall send the Party in breach a written notice giving full details of the breach and requiring the Party in breach to remedy the breach within thirty (30) days starting on the day after receipt of such written notice or in the case of an urgent need to remedy the breach so as to safeguard end-to-end connectivity, within such shorter period as the Party not in breach may reasonably specify.

If the Party in breach does not remedy the breach within the time period stipulated in the said notice, the UALL may be suspended at the option of the

Party not in breach provided that the Party being suspended shall have right of recourse to the Authority if it feels that such suspension was unjustified in the circumstances.

If the Party in breach does not remedy the breach within three (3) months from the date of receipt of the written notice, UALL may be terminated at the option of the Party not in breach. In this case termination shall occur immediately upon written notification by the Terminating Party to the Party in breach.

Provided that each of the Parties' right to terminate or suspend performance of the UALL pursuant to the above is without prejudice to any other rights available to the Parties, in particular the referral of the matter to the Authority for determination in accordance with the MCA Guidelines for Inter-Operator Complaints, Disputes and Own Initiative Investigations.

11.3 This UALL Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:

- (a) is unable to pay its debts; or
- (b) ceases to carry on business; or
- (c) has a liquidator or an administrator appointed; or
- (d) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
- (e) ceases to hold an authorisation in accordance with the ECRA.

11.4 Upon termination or expiry of the UALL Agreements, the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery by each Party of any equipment or apparatus supplied by the other Party (even where that equipment or apparatus is on the premises of the other Party).

11.5 On termination or expiry of the UALL Agreements either Party shall be entitled after reasonable prior notice in writing to the other Party to enter the premises of the other Party for the purposes of carrying out necessary disconnection works and repossessing any plant, equipment or apparatus of that Party or a Third Party installed by or for that Party. The Party on whose premises such plant equipment or apparatus was installed shall be responsible for compensating the other for any such plant equipment apparatus or things belonging to the other or such Third Party which are not so delivered in good condition (fair wear and tear excepted) and the Party carrying out such disconnection works shall indemnify the other Party in respect of any damage thereby caused to the premises fixtures and fittings, apparatus and equipment of such other Party. Neither Party shall be responsible for any damage to plant, equipment or apparatus belonging to the other Party which has been caused by any negligence or failure to perform necessary or timely maintenance by such other Party or by a

Third Party.

11.6 Termination or expiry of the UALL Agreements shall not be deemed a waiver of a breach of any term or condition of the said UALL Agreements and shall be without prejudice to either Party's rights, liabilities or obligations that would have accrued prior to such termination or expiry.

11.7 Notwithstanding the termination or expiry of the UALL Agreements, the preceding sub-clause and Clauses 12, 13 and 15 shall continue in full force and effect.

11.8 GO's right to terminate or suspend performance of the UALL Agreements pursuant to this Clause is without prejudice to any other rights or remedies available to either Party at law.

Reason for the change:

To balance rights and obligations between parties and to subject possible claims of unjust suspension or termination to the Authority.

J: ASSIGNMENT OF RIGHTS AND OBLIGATIONS

Annex B Clause 16:

16.1. Maltacom may at any time assign, sub-contract or transfer the UALL Agreements in whole or in part to any person without requiring any consent therefore from the OLO.

16.2. The OLO shall not be entitled to assign, sub-contract or transfer the UALL Agreements, either in whole or in part, or otherwise dispose of any of its rights or obligations thereunder to any person.

Proposed Text:

16.1 Unless otherwise agreed in writing, and subject to clause 16.2, no rights, benefits or obligations under this Agreement may be assigned, sub-contracted or transferred, in whole or in part, by a Party without the prior written consent of the other Party.

Provided that each Party may assign, subcontract or transfer this Agreement to an entity under its direct or indirect control or an entity acquiring all, substantially all or parts of its equity without the consent required under this Clause 16.1. The assigning Party shall promptly give notice to the other Party

of any assignment or transfer permitted to be made without the other Party's consent. Nevertheless, no notification shall be required in the case of a sub-contracting which can be made without the other Party's consent, provided that in such cases the Party making the sub-contracting shall remain exclusively liable vis-à-vis the other Party for the due and proper performance of all its obligations under this Agreement, and provided further that no relationship whatsoever shall be created between the sub-contractor and such other Party.

16.2 Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assignees. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

Reason for the Proposed Change:

Rebalancing of assignment of rights and obligations between the parties.

K: INFORMATION TO BE SUPPLIED BY GO

Current RUO:

Annex D5: Tie Cables Service

2.1.1.1 Generic Operational Requirements for Full Loop Unbundling Services
In the Distant Collocation Facility where the External Tie Cable(s) terminate/s it is the responsibility of the OLO, at the OLO's expense, to:

- Ensure that space is available for Maltacom to install an HDF of appropriate specification and with sufficient capacity to accommodate all requested External Tie Cables.
- Ensure that there is suitable accommodation for any Maltacom equipment that may need to be installed for the purposes of providing UALL Collocation Facility Service.

Additional Proposed Text:

Provided that GO provides information to the OAO of the required space to accommodate the equipment that is to be installed by GO. This information should be forwarded within 5 working days from the date that the OAO makes a formal request for a distance collocation facility.

Reason for the change:

The OAO needs to know the amount of space required to host GO's equipment.

L: ROUTING OF INTERNAL TIE CABLE

Current RUO:

Annex D5 Clause 2.2:

.... Maltacom will route the Internal Tie Cable within the MDF site at its own discretion.

Proposed Text:

.... GO will route the Internal Tie Cable within the MDF site taking into consideration the most efficient route possible.

Reason for the change:

To clarify that the GO should take utmost consideration of efficiency when determining the route for the internal tie cable.

M: DISPUTE RESOLUTION

Current RUO:

The Current RUO does not include a dispute resolution.

Proposed Text:

To insert a clause in Annex B: Terms and Conditions:

20.1 This clause shall not be applicable to disputes arising in respect to any breach, suspension and termination, as such matters are governed separately under Clause 11.

20.2 Save as provided in Clause 20.1 above, each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Agreement in the first instance through negotiation between the Parties through the normal contacts. This phase of the dispute resolution shall be referred to as 'Level 1'.

20.3 In the event of the Parties failing to resolve the dispute at Level 1 negotiation within two (2) weeks either Party shall have a right to invoke the dispute procedures specified herein on the service of notice ("the Dispute Notice") on the other Party. The Party serving the notice ("the Disputing Party") shall include in the Dispute Notice all relevant details including the nature and extent of the dispute.

20.4 Service of the Dispute Notice shall constitute escalation to Level 2. Level

2 shall consist of consultation between the parties in good faith to resolve the dispute.

20.5 If the endeavours of the parties to resolve the dispute at Level 2 are not successful within two (2) weeks of escalation of the Dispute to Level 2, either Party may upon service of notice ("the Level 3 Notice") on the other, escalate the dispute for determination by the Authority, hereinafter referred to as Level 3, in accordance with the MCA Guidelines for Inter-Operator Complaints, Disputes & Own Initiative Investigations. The Level 3 Notice shall be served on both the Authority and the other Party. The Level 3 Notice shall include all details relevant to the dispute together with a submission from both Parties as to the nature and extent of the dispute.

20.6 The normal contact for GO is:

Level 1:

Head of Wholesale Contacts

GO

[Address]

[Tel:]

[E:mail]

Level 2:

Contact Person Details

[Address]

[Tel:]

[E:mail]

The normal contract for the OAO is:

Level 1:

Contact Person Details

[Address]

[Tel:]

[E:mail]

Level 2:

Contact Person Details

[Address]

[Tel:]
[E:mail]

No change to the normal contact details shall be effected until same has been notified to the other Party.

20.7 The time limits specified at paragraphs 20.3 and 20.5 above may be extended by mutual agreement between the parties.

20.8 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Agreement.

20.9 Any disputes or queries that arise in relation to the charging principles of this Agreement or invoices furnished by GO to the OAO shall be subject to the dispute resolution provisions of this clause.

20.10 Where a dispute arises in relation to an amount payable in respect of an invoice then the OAO shall be entitled to withhold payment of the disputed amount due for payment, upon serving GO with a Level 1 notice and provided that the disputed amount is greater than ten percent (10%) of the total invoice amount due for payment.

20.11 Where the OAO invokes the provisions of this Clause after the due date of a disputed invoice, then the OAO shall not be entitled to withhold any portion of the amount due and payable.

20.12 Following resolution of the dispute, the Parties will issue a credit or tender payment as appropriate.

Reason for the Change:

To formalise a Dispute Resolution.

N: DEFINITION OF THE SHARED ACCESS SERVICE

Current RUO:

Main Body Clause 2.3

...

Definition: Shared Access Service

A service offered by Maltacom, whereby Maltacom provides the OLO with access to its Copper Access Network, allowing the OLO to may make use of specific upper band frequency spectrum of the twisted metallic pair, while Maltacom continues o use the local loop to provide the telephone service to the public.

The OLO will be given shared connectivity to a MPF for the purpose of providing xDSL services to Users. Shared access is achieved by using filters to separate the switched voice and xDSL services at the DSLAM location and the User premises.

The Shared Access Service will only be offered on MPFs that are currently working and supplying Maltacom analogue telephony service to the User. The implementation of the Shared Access Service will allow the MPF, by means of the introduction of frequency splitters in the circuit, to support the simultaneous operations of two separate service providers. Maltacom will continue to supply analogue telephony service and the OLO will deliver allowed xDSL services.

Main Body Clause 2.3.1

The Shared Access Service on Full Loop (see figure 5) allows the OLO access to frequency spectrum above that used to transmit voice services on a MPF which is used by Maltacom to transmit analogue telephony service.

Proposed change:

A service offered by GO, whereby GO provides the OAO with access to its Copper Access Network, allowing the OAO to make use of specific upper band frequency spectrum of the twisted metallic pair, while the current service provider continues to use the local loop to provide the telephone service to the public .

The OAO will be given shared connectivity to a MPF for the purpose of providing xDSL services to Users. Shared access is achieved by using filters to separate the switched voice and xDSL services at the DSLAM location and the User premises.

The Shared Access Service will only be offered on MPFs that are currently working and supplying analogue telephony service to the User by the service provider using the GO's network. The implementation of the Shared Access

Service will allow the MPF, by means of the introduction of frequency splitters in the circuit, to support the simultaneous operations of two separate service providers. The current service provider will continue to supply analogue telephony service and the OAO will deliver allowed xDSL services.

Main Body Clause 2.3.1

The Shared Access Service on Full Loop (see figure 5) allows the OAO access to frequency spectrum above that used to transmit voice services on a MPF which is used by the service provider using the GO's network to transmit analogue telephony service.

Reason for the Change:

In order to clarify that the Shared Access service will be offered to all those users who are serviced by providers using the GO's network.

O: SHARED ACCESS SERVICE DESCRIPTION

Amendments to Annex C1 are being proposed in order to reflect the above proposed change (Amendment N) to the Definition of the Shared Access Service. Annex C1 is being reproduced in the Annexes Document.

P: RIGHT OF REFUSAL TO PROVISIONING OF UALL COLLOCATION FACILITY

Main Body Clause 2.4.1

Maltacom reserves the right to refuse provision of any UALL Collocation Facility Service on grounds of lack of capacity or in circumstances where the work required to create space can be demonstrated to be practically and/or economically not viable. In those circumstances in which Maltacom refuses to provide any UALL Collocation Facility Service on grounds of lack of capacity, Maltacom shall, upon request, allow any authorised MCA representative to inspect the site(s) in question in order that the MCA may be satisfied that Maltacom's refusal is justified. The MCA will only intervene in cases of a dispute and site inspections will be carried out by the MCA only in connection with such disputes on refusal by Maltacom to provide collocation services.

Proposed Text:

GO reserves the right to refuse provision of any UALL Collocation Facility

Service on grounds of lack of capacity or in circumstances where the work required to create space can be demonstrated to be practically and/or economically not viable. In those circumstances in which GO refuses to provide any UALL Collocation Facility Service on grounds of lack of capacity, GO shall, upon request, allow any authorised MCA representative to inspect the site(s) in question in order that the MCA may be satisfied that GO's refusal is justified.

Reason for the Change:

To remove any restrictions on the MCA's right to inspect properties for the determination of space availability for UALL Collocation Facility services.

8 ANNEXES DOCUMENT

Throughout the Consultation Document, reference is made to the Annexes Document wherein the MCA has reproduced all those Annexes which were affected by the changes as proposed throughout Sections 3 to 6.

Proposed Decision #7:

The MCA proposes that the RUO and its annexes be amended in line with the preceding proposed decisions *inter alia* by implementing the amended annexes contained in the Annexes Document to this Consultation. Following the publication of a Decision by the MCA, GO shall affect the changes necessary to implement the mandated amendments within 2 weeks from its publication. These amendments shall be applied to all unbundling agreements which may have been concluded in accordance with the review clause.

The MCA proposes that every version of the RUO shall include a date and version number. In the case of any amendments, GO shall be obliged to maintain a special marked version of each version of the RUO showing tracked changes in respect of the former version. Such tracked version of the RUO is to be communicated to the Authority.

9 OTHER ISSUES

This Consultation and Proposed Decision deals with issues for which proposed amendments are put forward in order to address the issue at hand. The MCA believes that there are other issues which it will need to consider further beyond the context of the RUO *per se*.

9.1 Customer Ordering Procedures

A case in point relates to the customer ordering procedures related to a request from the OAO for a UALL Service as captured under Clause 1.2 General Principles in the Main Body:

'Maltacom reserves the right, prior to complying with a request from the OLO for a UALL Service:

- 1. To ensure that the prospective User, who would have applied to the OLO for the service in regard to which the OLO would be requesting the UALL Service, is Maltacom's registered subscriber for the voice telephony service or, if not, has obtained the consent of such registered subscriber to apply for the said OLO service;*
- 2. To ensure that the prospective User, who would have applied to the OLO for the service in regard to which the OLO would be requesting the UALL Service, does not have any outstanding debts with Maltacom. In the event that any such outstanding debts exist, Maltacom reserves the right not to comply with the OLO's request for the UALL service pending settlement by the User of the said outstanding debts; and*
- 3. Generally, to communicate with the prospective User who would have applied to the OLO for the service in regard to which the OLO would be requesting the UALL Service.'*

The MCA believes that clauses 1 & 2 depicted above should be made more robust and sufficiently elaborated so as to minimize room for misinterpretation. For the time being, the MCA reserves the right to update or change them in the future as deemed necessary. In the case of clause 3, the MCA is of the opinion that this needs to be revisited on the basis of the Decision entitled *'Preventing anti-competitive winback tactics in Number Portability, WLR, and Carrier Pre-Selection'* published by the MCA in March 2008.

With regards to the ordering processes when the OAO applies for UALL service on behalf of their customer/s who opt to retain their numbers, the ordering processes relating to Number Portability shall apply over and above the LLU processes stipulated in Annexes G and J. Any interim routing issues that may arise in this instance shall be addressed in the near future.

9.2 Other Work streams

As already indicated under Section 1.3 of this Consultation Document, further specific issues which are related to technical aspects including the Access Network Frequency Plan (ANFP) and sub-loop unbundling will be the subject of a separate workstream. The same applies with respect to certain documentation which is complimentary to the RUO. It is also the MCA's intention to also consider the introduction of Key Performance Indicators (KPIs).

10 CONSULTATION FRAMEWORK

The MCA invites comments from interested parties regarding this Statement of Proposed Decision. Comments which are not specifically dealt with in this Consultation but are directly related to the subject matter under this Review are also welcome. Written representations will be made public by the MCA subject to the MCA's Internal Guidelines on Confidentiality published on 16 December 2004.

The consultation period will run until close of business of Monday 11 January 2010. Comments should be sent to:

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