

GO's Reference Unbundling Offer:

MCA's Position and Further Consultation on the Review of Sub-Loop Unbundling related aspects of the Reference Unbundling Offer

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1. Introduction

In April 2011, the MCA published a consultation document¹ entitled 'Review of Sub-Loop unbundling related aspects of the Reference Unbundling Offer' (for ease of reference this original document will be referred to as 'CD' in the remaining part of the text).

The scope of this CD was to continue along the path of the RUO review of 2010 and focus on the Sub-Loop Unbundling (SLU)-related aspects of the RUO, which in turn was already earmarked for future analysis in the said review.

By 13th May, two respondents had submitted their views to the MCA, namely GO plc and Vodafone Malta Ltd.

After analysing the responses, the MCA concluded that whilst some elements of the original consultation can be concluded others need to be further refined to take into account the feedback received.

This document is structured in two parts. Part 1 puts forward the final position of the MCA on certain issues raised in the consultation paper. Part 2, in turn will consult on the MCA's proposed refinements to certain aspects of the migration rules which are to be established so as to regulate GO's FTTC deployment and hence manage the impact of this transition on the Company's SLU offer. For ease of reference, Part 2 features the original text of the CD with tracked changes reflecting the proposed changes emanating from the responses received.

¹Link to document MCA/C/11-0282: <http://www.mca.org.mt/consultation/gos-reference-unbundling-offer-consultation-proposed-decision-april-2011-mcac11-0282>

PART 1. MCA's Position

1. MCA's Approach to SLU Review

In the CD the MCA outlined the SLU review carried out till then. On the basis of the work carried out and the consultants' recommendations, the MCA had proposed a number of work streams it intended focusing on.

1.1. Responses Received

One of the respondents was in agreement with the work streams as they were proposed in the CD. However, this respondent was of the view that the work stream related to 'Passive Backhaul Alternatives' should be given a higher priority as opposed to the other work streams and should not be conditional upon the outcome of the upcoming Market 4 review. This respondent also stressed the importance that VLANs are taken into account in the Ethernet pricing review.

The other respondent expressed some reservations vis-a-vis the Ethernet price review.

1.2. MCA's Position

With regards to the review of the Ethernet connections, the MCA has always kept the market under review. As outlined in the CD, the MCA is well aware that the availability of backhaul alternatives and their pricing models play a crucial role in SLU deployment. Moreover recent technological developments have led to the increasing reliance on Ethernet connections. These developments underpin the need for a comprehensive review of the Ethernet connections framework.

In the meantime, from the time of publishing the CD, the MCA concluded the review of the preliminary benchmarking exercise referred to in the said document. In this exercise the MCA attempted to use a consistent sample of Ethernet products directly comparable to the configuration used by GO locally. However, this selective process, coupled with the general lack of reliable information in this field, led to a very small sample of European countries. This resulted in a considerable level of variability in the results obtained, with standard deviations representing between 40% and 70% of the mean prices surveyed.

The MCA therefore felt that these results were inconclusive as they could not be relied upon to determine a target price level. This notwithstanding the MCA found indications

in favour of lower price levels, particularly at higher speeds. For this reason the MCA feels that the best way forward is to base the review of Ethernet prices on a bottom-up cost model, as this would give the whole process greater legal certainty. The work on the model is scheduled to start later on this quarter and the review of Ethernet prices will be given priority on all the model-based prices that the Authority will be reviewing in the near future. The review would consider the issue of VLAN paths.

Turning to passive backhaul connections, the MCA would like to point out that to date there is no obligation on any network operator to offer such services. These obligations can only be imposed as part of the potential remedies under *inter alia* Market 4 or as a result of the revised provisions of the new electronic communications regulation framework, which has just come in force.

In view of the above, the MCA confirms the remaining work streams identified in the CD and their order of occurrence. For ease of reference these are summarised in Table 1 hereunder. As can be seen, given the decision to base the review of Ethernet prices on the bottom-up model, the cost oriented Ethernet Prices moved up the list as the next work stream to be tackled by the Authority following the completion of the migration rules being consulted upon hereunder.

Table 1. Identified work streams

Identified Work stream	Order of Occurrence
Cost Oriented Ethernet Prices	Following development of bottom-up cost model earmarked to start later on this year
Passive Backhaul Alternatives	Following/conditional on next Market 4 analysis earmarked to start later on this year or the provisions of the new Electronic Communications Regulation Framework.

MCA Position:

The MCA has determined that the work streams summarised in Table 1 will be carried out in the coming months, following the conclusion of the work on the Migration Rules. These work streams will be carried out in the order of occurrence listed therein.

PART 2. Further Consultation

2. Migration Rules and Framework

2.1. Migration Plans Information Flow Model

In the CD the MCA proposed a framework to regulate the sharing of information related to GO's migration plans with OAOs. In its proposals the MCA sought to satisfy the need for transparency whilst on the other hand safeguarding the confidentiality of commercially sensitive data.

For this reason the MCA proposed three levels of information, with the level of commitment from the OAO increasing at each stage, as shown hereunder:

LEVEL 1 Information: Submitted to OAO upon signing of an Non-Disclosure Agreement (NDA)

LEVEL 2 Information: Submitted to OAO following the signing of the Unbundled Access to Local Loop Agreement (UALL)

LEVEL 3 Information: Submitted to OAO upon signing of a co-location agreement

2.1.1. Responses Received

One of the respondents was in agreement with the MCA's decision to implement the applicable stages of the migration plan information flow model, as well as the MCA's review of Plan 0, with immediate effect. However, this respondent was in disagreement with the proposal that the "decision may be waived if GO can prove that an alternative and equivalent arrangement along the parameters of what is being proposed herein is already in place and is acceptable to both parties".

On the other hand, the other respondent considered that, at Level 1, it would be more appropriate that the average quantity of terminated secondary pairs per cabinet in a particular exchange area is disclosed, rather than the quantity of terminated secondary pairs for each cabinet. This respondent also proposed that the timeframe for delivery of information is set at 1 calendar week. It also did not see the logic in developing a secure LLU website at this time. It considered that the method of delivery should be agreed between GO and the OAO.

With respect to Level 2 information, this respondent suggested that Plan 0 should be given directly to the OAO within 1 month of publication of the decision rather than to the MCA.

With regards to Level 3 information it requested a clarification whether 'co-location agreement' in the context of this section refers specifically to the full-loop co-location agreement only or whether it includes any TVA agreements. This respondent was also of the view the timeframe for delivery of information at Level 3 should be set at 1 calendar week.

This respondent also pointed out that in the event that an area served by a particular cabinet is subject to heavy development, it might become necessary to split the cabinet area in two. It was of the view that this possibility should not be considered a change in plan in the context of this document.

Finally with respect to the synchronisation of information, this respondent was of the view that the cut-over notice is given to the OAO 3 months prior to the cutover date.

2.1.2. MCA's Position

The MCA is of the view that, given that GO did not suggest an alternative information scheme, the information flow proposed by the MCA in the consultation should be retained.

The MCA agrees that at Level 1 information, the average quantity of terminated secondary pairs per cabinet should suffice. However, the MCA is of the view that the actual number of terminated secondary pairs per cabinet should be provided once a UALL agreement is signed. The MCA is also in agreement with a timeframe of one calendar week for the submission of the Level 1 information.

The MCA agrees with the second respondent's view that the Level 2 information should be directed to the OAO in the shortest timeframes possible without the need for a review of the information by the MCA, however the Authority should be in copy of such a submission.

The MCA also considers that at this point in time in the interest of efficiency it would be better if the method of delivery is agreed between GO and the OAO.

The reference to the 'co-location agreement' in the Level 3 information section was meant to also include the TVA agreements. This has to be taken in the context that in the CD it was proposed that the duration of the TVA service varied depending on whether a cabinet change was carried out according to plan, anticipated or postponed. Therefore a mechanism was required to provide this timestamp. However, in the second round of consultation, in view of the responses received, which in turn highlighted the administrative burden of having to follow different commencement dates for each different site as well as different OAOs, the MCA is proposing that the duration of the TVA service is streamlined.

With regards to the delivery timeframes for the Level 3 information, the MCA is in agreement with a timeframe of one calendar week.

The MCA is also aware that in certain cases changes to GO's deployment plans are driven by external forces namely intensive building developments. The MCA is therefore in agreement with the proposal that in these instances this change is not considered as such for the purposes of these migration rules, in other words, GO would not be liable for compensation. However, the MCA requests that these instances are clearly documented. Also the MCA directs GO that it should in all instances do its utmost to keep the OAO informed of these developments.

With respect to the detailed synchronisation, the original intention of the MCA was to ensure that the OAO had ample time to prepare for its own migration to the cabinets. This would guarantee that GO's plans are not hindered by any delays on the part of the OAO, whilst also ensuring continuity of service for the OAO's clients.

The MCA is well aware that the migration of service to cabinets is an intensive project which presents a number of challenges. The MCA therefore agrees that the cutover date offers a better timestamp in terms of providing clear visibility to the OAO. However, it deems that 3 months represent a very short timeframe for the OAO, when considering the logistical processes involved, which amongst others, include the permits related to street cabinets and other civil works. This is also corroborated by the fact that GO, as the only electronic communications network operator deploying telephony street cabinets to date, has on a number of occasions expressed its concerns with the Authority in conjunction with the permitting process in some areas or particular related circumstances.

At the same time the Authority appreciates the difficulties in giving clear timeframes in such a project. Therefore it is proposing that the overall timeframes in the process are updated in such a way that they leave sufficient time to clear all related permitting issues given the uncertainty surrounding the whole process.

In general, the MCA is proposing that the OAO has as a minimum of one year to complete the works (see Section 2.2.3 of this document for more details). Therefore in the case of the OAO taking up a TVA offer this would need to be retained for a minimum of 6 months after cutover. If, however, GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept for 9 months after cutover.

This notwithstanding, the MCA is amenable to streamline further the process if sufficient robust evidence is submitted by GO (as the only ECS network operator deploying telephony street cabinets to date) showing that a shorter overall timeframe would be sufficient. This evidence should amongst others contain information on the process flow involved in the cabinet procurement and deployment, together with related mean calendar days elapsed for each step. In this regard information on the variability of these mean lead times will greatly help the Authority to form an opinion on the stability of the process flow in terms of the time involved.

In conclusion the proposed changes are highlighted both in the following section and in subsequent ones.

2.1.3. MCA Proposed Decision

In view of the position outlined above, the MCA is putting forward for consultation the following changes to the Migration Plans Information Flow Model. For ease of reference the changes are being highlighted in track changes.

2.1.3.1. Level 1 Information (Section 2.2.1 in CD)

This level of information is aimed at providing the OAO with a snapshot of the current status of GO's network. Hence the MCA is proposing that upon the signature of an NDA GO is to make available the following information items to the OAO:

- Number of inactive cabinets (cabinets that do not house active DSL equipment) per exchange
- Number of active cabinets per exchange
- **Average** Number of terminated secondary pairs ~~for each per~~ cabinet per exchange area.

This information should be given, in addition to that already mandated in the RUO as per the MCA's LLU Review decision, within ~~three working days~~ **one calendar week** from the signing of the NDA. The above information shall be provided by means of a secure access over GO's website, **or any other means agreed upon by the parties involved until further guidance is given by the MCA in this regard.**

2.1.3.2. Level 2 Information (Section 2.2.2 in CD)

2.1.3.2.1 Contents and Format

This level of information is aimed at giving sufficient visibility to the OAO to be able to plan its network deployment, and hence formulate a schedule for drafting the required co-location agreements. This level of information should take the form of a 5-year forward looking plan of GO's network structured as shown in Appendix 1 (Panel A) of this document.

As shown in the stylised extract therein, the MCA is proposing to split the report in four distinct information categories.

- **Category 1:** Represents the space where GO will be registering those cabinets earmarked for an upgrade in a particular year within the first three years (Columns: Yr1 to Yr3 of Panel A) of the plan. Category 1 data can be extended as shown in Panel B of Appendix 1, which depicts an additional column in which GO might insert any cabinets that can be committed for an upgrade in Years 4 and 5 of the plan.
- **Category 2:** Represents the space wherein those cabinets considered for upgrade between the fourth and fifth year (Column: Considered Yr4/Yr5 in Panel A) of the plan are to be inputted.

- **Category 3:** Represents the space where to input those cabinets that are either just considered for subsequent years or their status remains indeterminate.
- **Category 4:** Represents the space wherein the cabinets that GO has already upgraded are to be inputted.

In addition 'Plan 0' should also include the number of terminated secondary pairs per cabinet.

For ease of reference this plan will be referred to as '**Plan 0**' throughout the rest of the document. The OAO shall be given access to Plan 0 within two weeks from the signature of the UALL agreement. The above information shall be provided by means of a secure access over GO's website, **or any other means agreed upon by the parties involved until further guidance is given by the MCA in this regard.** This is also without prejudice to any other provision featured in the RUO that are directly or indirectly linked with the signature of the UALL agreement.

2.1.3.2.2 Compilation of Plan 0 and Refresh Rate

So as to minimise as much as possible the effort required to produce this report, the MCA is proposing to base it on the structure of the periodical network updates that GO submits to the Authority. The MCA is also sensitive to the fact that a certain amount of time would be needed to formalise a multi-year plan from GO's side. For this reason the MCA is proposing that Plan 0 should be finalised and submitted **for the MCA's review to the OAO** within one month from the publication of the MCA' decision notice. **The MCA shall be kept in copy of this submission.**

In the interim period, GO is still obliged to give access to its network, including also the availability of necessary information, according to the obligations imposed upon it in the LLU Market analysis decision currently in force. Hence the lead time to the publication of a final decision from the MCA, in no way exonerates GO from relaying sufficient information and granting access to OAOs who would have already signed UALL and co-location agreements with GO. This is also in line with the NGA recommendation which advocates (see Recitals (39) and (41) amongst others) for the continuation of the existing SMP obligations during the course of network changes and the right (with

appropriate safeguards for confidentiality) of the OAO to be given timely information about expected network changes and upgrades.

Furthermore the MCA is proposing that an update of Plan 0 is to be made available to the OAO in question on the lapse of every subsequent 12-month (calendar) period. As will be explained in Section 2.2.3.2 (Section 2.3.2 in CD), this does not mean that obligations related to changes in plans will remain onerous on GO indeterminately. These subsequent updated plans will be referred to with the generic term of '**Plan i**' throughout the remainder of this document

2.1.3.3. Level 3 Information (Section 2.2.3 in CD)

Level 3 information is targeted at obtaining the most up-to-date status on that portion of the network that the OAO would have shown interest and commitment in. In fact this level of information is linked with the signing of individual co-location agreements at each individual exchange site² in GO's network. The information contained in these plans, which for ease of reference will be called '**Plans E_i**' throughout the rest of the document³, will be strictly limited to those cabinets falling within the catchment area of an exchange site, upon which a co-location agreement would have been agreed upon between GO and the OAO.

Plans E_i will serve as 'time stamps' from which any changes that might subsequently occur in GO's network upgrade plans (related to those specific exchanges covered by a co-location agreement entered into by that specific OAO) might trigger certain rights to be exercised by the OAO. The underlying rules for applicability of such rights are treated in Section 2.2.3 hereunder. This process will on the other hand ensure that GO will be free to effect any changes in other areas to the network that would not have been covered by any co-location commitments.

The format of this report should be the same as that of Plan 0, however as explained earlier, the content would be restricted to a particular area of a specific exchange. Plans E_i should be accessible to the OAO within ~~five working days~~ **one calendar week** of the signing of the corresponding collocation agreements. The above information shall be

² The term "exchange site" refers to a site housing Main Distribution Frames (MDFs) giving access to GO's copper access network as listed in Annex I of the RUO.

³ E_i refer to a given number of individual sites upon which a co-location agreement exists between GO and the OAO.

provided by means of a secure access over GOs website, **or any other means agreed upon by the parties involved until further guidance is given by the MCA in this regard.**

2.1.3.4. Detailed Synchronisation information on cabinet upgrades and other additional requests for information (Section 2.2.4 in CD)

The level of information contained in Plan 0 (and subsequently Plans 1...i) and Plans Ei will not be detailed to the level of the day and/or month of when a particular cabinet, or cluster thereof, is expected to be upgraded. This is because the MCA is sensitive to the fact that such planned upgrades might entail a number of logistical, managerial and operational challenges. This notwithstanding the MCA is proposing that more detailed logistical information on a cabinet-by-cabinet basis should be relayed to the OAO by not later than **3 months prior to the cutover date (also referred to as 'cutover notification') ~~5 months before the actual related works start on the first cabinet of the planned cluster of cabinets.~~** Furthermore the MCA is of the opinion that changes to these synchronisation plans should not carry further regulatory obligations. The MCA expects both parties to act in good faith and co-operate with each other at such an advanced stage of the SLU process. The MCA nonetheless remains amenable to intervene on an *ad hoc* basis should any of the parties wish to bring any such logistical problems to the Authority's attention. In this regard reference is also made to the dispute resolution provision already established in the RUO.

GO should also consider any additional ad hoc information that might be requested by the OAO provided that this is within reason. GO should act in good faith and endeavour to furnish the OAO with the most accurate information being requested. Although no further information-related obligations are being imposed on GO apart from those proposed in Sections 2.1.3.1-2.1.3.3 above, the MCA remains amenable to intervene and mediate between the parties in conjunction with any additional information requests that the OAO might have.

2.1.3.5. Concluding Summary and Proposed Decision

Figure 1 hereunder depicts a schematic summary of the information levels referred to in Section 2.1.3 above. As seen hereunder the information submitted is gradated with the level of commitment between the parties.

Figure 1. Information Flow Model

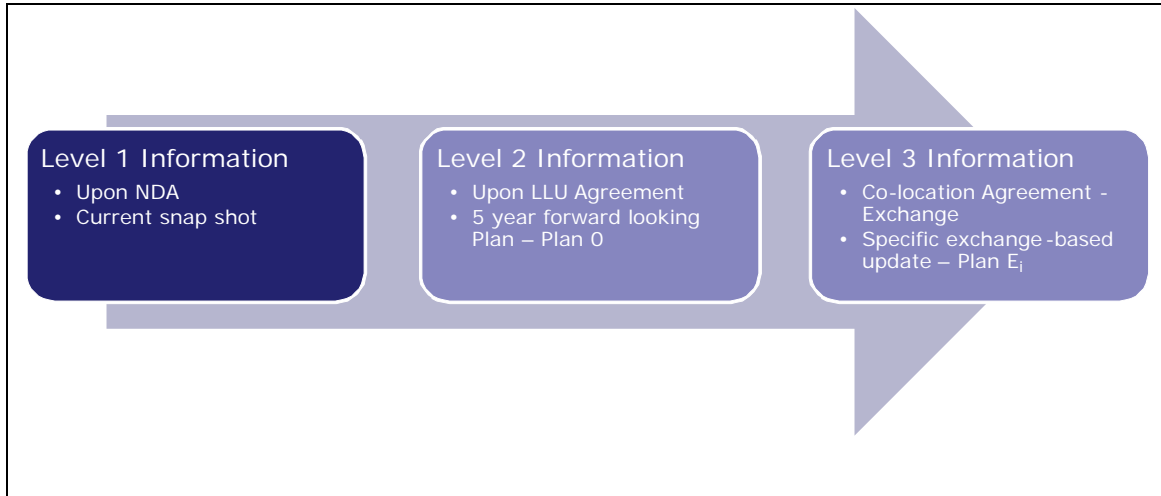
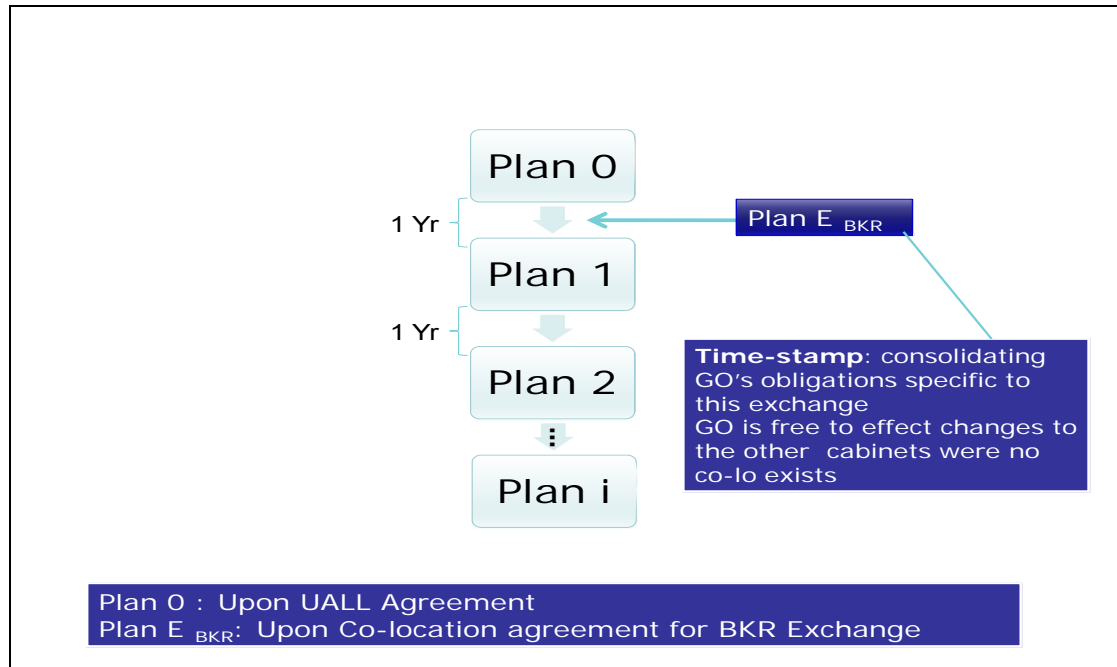


Figure 2 on the other hand shows the relationship between Level 2 and 3 information. It shows the forward looking plans being refreshed at 12-month frequency starting from Plan 0 as well as a hypothetical example of a co-location agreement being signed at a determinate point in time after Plan 0 for the Birkirkara exchange (Plan E_{BKR} is in this case substituting the generic Plan E_i referred to in Section 2.1.3.3 above). In this example only subsequent changes to the plans pertaining to the cabinets in the catchment area of the Birkirkara exchange will be subject to obligations featured in Section 2.2.3 of this document.

Figure 2: Example on the relationship between Level 2 and 3 information



Information Requirement:

Go is requested to submit a process flow model related to cabinet deployment as elaborated in section 2.1.2 of this document, for the MCA to assess the possibility of streamlining further the related timing being proposed in this document

Proposed Decision 1:

The MCA hereby mandates the information flow model detailed in Section 2.1.3 above inclusive of all the detailed timings and content featured therein.

GO is directed to incorporate this information flow model in a appropriate annex in the RUO and submit it for the Authority's final approval by not later than six weeks from the publishing of the MCA's final decision notice.

GO is directed to give logistical details on when each planned cabinet committed for that particular year is to be upgraded to allow the OAO the possibility to synchronise its operations. This information is to reach the OAO by not later than ~~3 months prior to the cutover date 5 months before the commencement of work on the first cabinet of a given planned cluster.~~

What are your views on the MCA's Proposed Decision 1? Please indicate the specific numbered sections when commenting on specific aspects of the information flow model.

Proposed Decision 2:

For those OAOs that have already signed an NDA, UALL and/or Co-location agreements, GO is to implement the applicable stages of the migration plans information flow model ~~inclusive of all the detailed timings and content featured in Section 2.1.3 of this document~~ with immediate effect following the publication of this decision notice ~~as well as the MCA's review of Plan 0.~~

The refresh rate of Plan 0 should be set at a 12-month interval from the submission of the said plan (Plan 0).

~~This decision may be waived if GO can prove that an alternative and equivalent arrangement along the parameters of what is being proposed herein is already in place and is acceptable to both parties.~~

Do you agree with Decision 2 above? Please state justified reasons for any disagreement or comments.

2.2. Migration Rules

In the CD, this section put forward the concept of pre-reserved space in future cabinets, whilst laying down the proposed rules and obligations emanating from Plan 0. These rules were split in two sections. One section assumed that all the information given in Plan 0 stayed constant. The other section presented the basic rules and obligations aimed at managing potential changes in GO's migratory plans and their impact on the Company's existing wholesale unbundling offers.

2.2.1. Responses Received

On Pre-Reserved Space:

One of the respondents welcomed this initiative. It suggested that GO should make known to the MCA the computations used to determine the IRU price. This respondent also highlighted the importance of other utilities such as ducts, poles and so forth.

The other respondent considered the reference not only in this section but throughout the consultation paper to the NGA Recommendation as both premature and lacking relevance for the scope of the exercise.

This respondent held that given that none of the operators have any exclusive rights to deploy their cabinets, there shouldn't be any obligations to share the cabinets. Without prejudice to this position it contended that the possibility of allocating space in active cabinets could be constrained by a number of factors including:

- a. The need to segregate access between the respective operators' active equipment so that one operator does not have access to the equipment of the other operator.
- b. The level of demand for DSL capacity in a particular cabinet area; in particular in this case one has to consider what would happen if the density of DSL services in a particular area is such that the full capacity of the active cabinet is required by the incumbent.
- c. Heat dissipation limits of the cabinet. These are known for the current deployment of DSL technology and port density, but would be subject to change in the event of changes to any of these variables, by either operator.

In addition this respondent proposed that a provision should be added to the list of conditions in section 2.3.1.1 of the CD which provision should include an explicit requirement on the OAO to follow the cabinet specifications established by the incumbent and indemnify the incumbent against any damage resulting from non-compliance. In addition this respondent suggested that it should be specified that the use of the reserved space should be restricted exclusively to DSL equipment and that these rights should be non-transferable. This respondent also considered that the space reservation should be conditional on prior signature of a co-location agreement for the exchange area.

This respondent also proposed that taking into consideration procurement timeframes, the OAO should have to place reservations within 1 month from the date the incumbent gives notice to the OAO of cutover. Finally this respondent also proposed that it should be specified that the space reserved by the OAO should be utilised within a predetermined timeframe.

On Migration Rules – No change:

One of the respondents did not agree that in some instances the OAO would have to bear the entire costs of the migration to the cabinet. This respondent also highlighted that situations could arise that impeded an OAO from complying with the requirement to synchronise with GO's plans.

This respondent requested a clarification concerning the duration of the TVA service following the cabinet cutover. It also suggested that the OAO should be provided with a notice one (1) calendar year prior to the commencement of the TVA alternative.

This respondent also requested the MCA to clarify the phrase "[t]his does not mean that all the investment made, or cost incurred, should be eligible for compensation".

Additionally, with regards to the TVA alternative as outlined in point 2.4 of Section 2.3.1.2 of the CD, this respondent requested a clarification from the MCA why this option depends entirely on GO when the migrations considered under this part would not have been planned in advance. It also requested the MCA to confirm whether the provision of a TVA alternative would effectively replace the OAO's compensation envisaged in the same section. Finally it requested the MCA to clarify under what circumstances would GO have the right to refuse to offer TVA to the OAO.

The other respondent on the other hand contested the imposition of Temporary Virtual Access and stated that its subsequent comments were without prejudice to its position on the subject.

This respondent requested confirmation that the offering of TVA for Category 1 sites does not trigger the Level 3 disclosure commitments. In addition it proposed that the duration of the TVA should be capped to a maximum of 3 months following the cabinet cutover.

On Migration Rules – Change Management:

One of the respondents requested the MCA to clarify what it meant by the phrase 'the eligibility window expires upon the elapse of a five-year period from the signing of the UALL agreement'. This respondent also requested clarifications as to the timeframes for the TVA alternative.

The other respondent requested a clarification concerning the commencement of the 5-year visibility window in cases where the UALL agreement already exists prior to the publication of the MCA Decision under consultation. This respondent also proposed that the TVA access should in both cases be maintained for a maximum of 6 months following cutover so as to limit the complexity of the process.

On Exchange Decommissioning:

One of the respondents was of the view that this section failed to consider how the MCA will actually be able to verify that the indicated thresholds have been met. It also requested the MCA to clarify the reason behind opting for 25% as an adequate threshold.

Furthermore, this respondent considered the one (1) year notice in this particular circumstance to be too short, especially taking into account that the MCA is proposing a five-year notice period in the previous point 1.1 of Section 2.3.3 of the CD. This respondent stated that it believed that a period of eighteen (18) months would be more adequate in order for the OAO to be in a better position to plan the consequences created by the decommissioning exercise.

The other respondent expressed concern at the reliance on the Commission Recommendation on NGA networks. In any case, it pointed out that this recommendation also stipulates that the notification period for exchange decommissioning should take into account national circumstances. In addition this respondent pointed out that the ANFP provides that in a number of cases both the incumbent and the OAO should move out together from an exchange area to avoid interference. In view of this, this respondent considers that the proposed 5 years and 25% rules appear to be in conflict. It suggested that it would be more sensible to apply the rules proposed in section 2.3.2.1 of the CD.

This respondent also requested clarifications vis-a-vis points 3.4 and 3.5 of section 2.3.3 in the CD in conjunction with pre-existing UALL agreements prior to the publication of the MCA Decision under consultation. In this regard, this respondent asked for a clarification on whether these proposed provisions would be applied retrospectively. This respondent remarked also that the CD seemed to contradict the advice that the MCA had given GO with respect to a particular exchange site. Finally this respondent also pointed out that there may be cases where an exchange is not fully decommissioned, but part of its service area is migrated to a new point-of-presence.

2.2.2. MCA's Position

As a general comment the MCA would like to point out that although according to the current version of the NGA EU Recommendation, the technology currently deployed by GO does not classify as a next generation access technology, the network structure resulting from GO's Fibre-to-the-Cabinet (FTTC) upgrade is identical to that of a next generation access network, since the same Recommendation classifies VDSL2/2+ as such. Therefore the issues resulting from GO's network upgrade are in principle identical to those experienced by OAOs following an upgrade to next generation access networks.

The NGA Recommendation provides a framework to deal with the issues arising from the deployment of next generation access networks, including the problems related to the physical upgrade of existing networks.

In view of this, from a consistency and business continuity point of view, the MCA feels that it is justifiable to apply the relevant concepts in the NGA Recommendation to the Maltese context.

On Pre-Reserved Space:

The MCA agrees with the proposal that GO should make known to the MCA the computations used to determine the IRU price. The MCA is also of the view that GO should inform the Authority when a similar agreement is reached with an OAO.

The MCA feels also that GO should present the access seeker with clear and exhaustive information on the price computation of the IRU so that the OAO is afforded an informed decision.

The MCA also noted that the factors listed by the second respondent could constrain the availability of pre-reserved space. In fact the provisions included in Section 2.3.1.1 of the CD clearly state that the OAO cannot alter the cabinet specifications and that a maximum of one shelf can be pre-reserved.

With respect to the situation whereby a whole cabinet is required by GO to service the current level of DSL demand, then the MCA feels that in this case the OAO would not be entitled for pre-reserved space.

In addition, should at any point in time in the future, the need arise for GO to utilise further space within a cabinet in which a shelf is already pre-reserved by an OAO, GO would have the right to buy back the IRU from the OAO, on the same conditions that it would have sold it to the same access seeker, except for the fact that the value of the IRU buy-back should however reflect the remaining useful life and fair value of the IRU. The OAO would in that case be required to deploy its own street cabinet. The rationale of this proposal is based on the principle that if GO's demand was sufficient to exhaust the cabinet space in the first place, the OAO would have had to deploy its own cabinet anyway.

In this case GO is to offer an uninterrupted service for a maximum of one year along the principles laid out in Section 2.2.3. Hence if GO opts to give a 3 month notice then GO needs to offer a TVA service for a maximum of nine months. The rationale behind this reflect the fact that such a situation is very similar to a scenario where the OAO has to migrate to a cabinet from the exchange following a cabinet upgrade.

In this eventuality GO has to be in a position to prove to the MCA that such space was in actual fact utilised by the company. For this reason the MCA has to be kept abreast of such developments at all times.

The MCA explored other alternative arrangements based on the sharing of the second cabinet. The Authority however concluded that such an arrangement would either force GO to bear the cost of excess capacity in the second cabinet or else, in a scenario where the cost is split on a 50:50 basis, this would be incongruent with the level of granularity of the shelf utilisation, since the current cabinets are configured to hold three shelves. This would in turn result in either GO or the OAO having to use less space than they would have paid for. Furthermore, an OAO can end up paying more in case it would need a relatively smaller cabinet to satisfy its own demand.

With respect to the issue of indemnification against potential damage, the MCA is of the opinion that this issue should be dealt with at a contractual level between GO and the OAO. The MCA however reserves the right to intervene and, if deemed necessary, change these provisions if it transpires that such conditions are impeding an agreement between the parties.

The MCA agrees that the reserved space should be restricted exclusively to DSL equipment and that the rights are non-transferable. The MCA also agrees that the space reservation should be conditional on prior signature of a co-location agreement either for TVA or local loop unbundling for a given exchange area.

The MCA is of the view that the timeframes established, should allow adequate time for an agreement to be reached. The MCA is also cognisant of the fact that each organisation has its own internal procurement processes that need to be adhered to. The MCA agrees with the proposal that any reservations should be placed within 1 month from the date of cutover notification. However, what needs to be established is the notification period to be given by GO to the OAO. The MCA feels that having the forward looking plans proposed in the information flow model above, the OAO would have sufficient time to conclude any pre-reserved space arrangement in good time if this operator takes the initiative to express interest and hence kick-start the whole process sufficiently in advance.

This notwithstanding the MCA is sensitive to the fact that anticipation to the above mentioned plans can negatively affect this visibility. For this reason the MCA is also

proposing that where anticipations in Plan i occur, advance notice by GO offering pre-reserved space has to amount to a minimum of two months prior to the cutover notice.

If certain cabinet upgrades are still awaiting approval from GO's Board of Directors, these agreements can be concluded subject to this approval.

With respect to access to other utilities, the MCA has already expressed its views in Part 1 of this document.

On Migration Rules – No change

The MCA would first of all like to clarify that the term 'upgrade' used in point 1.2 of section 2.3.1.2 of the CD was making a specific reference to a cabinet being 'upgraded' to fibre. For the avoidance of doubt no other meaning was being attached to this term. In order to clarify further point 1.2, this was referring to the fact that should, in that specific case, the OAO opt to take up a full-loop unbundling offer rather than the TVA service offered by GO, then when GO upgrades a cabinet in that specific area, the OAO shall perform the migration **of its own subscribers** to the cabinet at its own expense.

The MCA would also like to clarify that in the CD it was proposing that in the case that the upgrades are carried out according to plans, the TVA service would be active from the date when it is requested by the OAO till 6 months following the cutover of a given cabinet. In this further consultation the MCA is proposing that this basic setup remains unaltered. In addition as highlighted earlier in this document the MCA is establishing that as a minimum the OAO would have a one-year timeframe to complete the works involved.

Given that the OAO will have a time window of five years in terms of visibility, coupled with the safeguards included in the timeframes for the TVA service, the OAO will have considerable time to prepare in advance for future cabinet upgrades. It is therefore imperative that the OAO synchronises its network plans with those of GO.

The phrase "[t]his does not mean that all the investment made, or cost incurred, should be eligible for compensation", was referring to the provisions included in Section 2.4 of the CD, which section gave a detailed explanation of the costs eligible for compensation.

With respect to the respondent's comments on point 2.4 of Section 2.3.1.2 of the CD, the MCA's rationale in this regard is based on the premise that following the first three years of the migration plan, the OAO would be favouring a full unbundling set-up which would then be migrated by GO according to principles of the eligible costs presented in the CD. This rationale is reinforced by the fact that an OAO having opted for physical unbundling in the first place is therefore by definition pre-disposed to favour physical access to TVA, and hence the temporary nature of the latter. In other words, the MCA is of the view that beyond a short-term period (defined as Category 1 in the CD), the OAO's migration path should be linked with physical access as opposed to a TVA-type alternative. This notwithstanding, for Category 2 and 3 cabinets, GO is free to offer TVA on a voluntary basis and in so doing offering another alternative to the OAO.

In the case of take-up of such a voluntary offer, the MCA is however confirming its proposal that GO will not be liable for compensation since according to the eligible costs principles laid down in the CD, the OAO would not have incurred the costs associated with a full loop unbundling deployment.

In the CD it was also proposed that the duration of the TVA service varied depending on whether a cabinet change was carried out according to plan, anticipated or postponed. Therefore a mechanism was required to provide this timestamp. However, in this round of consultation, in view of the responses received and in the interest of simplicity, the MCA is proposing that the duration of the TVA service is streamlined and maintained constant. In this context, the offering of TVA will not trigger the Level 3 information disclosure.

As outlined in Section 2.1.2 above, the MCA is proposing that the OAO has as a minimum of one year to complete the works. Therefore in the case of the OAO taking up a TVA offer this would need to be retained for a minimum of 6 months after cutover. If, however, GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept for 9 months after cutover. In addition the MCA would also like to point out that in terms of advance notice to the OAO's changeover, the 1 year time frame referred to above can be interpreted as a minimum since an OAO would have further advance notice with respect to cabinets that are expected to be upgraded/considered in subsequent years in Plan 0 and its annual updates.

Finally the MCA would like to point out that its views on the TVA service *per se* are expressed in Section 2.4 hereunder.

On Migration Rules – Change Management

The migration rules being proposed by the MCA will apply to the first five years following the signature of a UALL agreement. The MCA would like to clarify, that though the obligations arising out of these migration rules will elapse following this five-year period, GO will still be bound to provide yearly updates to the OAO, i.e. Plan i. For the sake of clarity, this relationship is outlined in greater detail in Appendix 3 of this document.

As explained earlier in section 2.1.2 of this document the MCA is proposing further streamlining and standardisation in the duration of TVA. This streamlining would also apply to this scenario.

In addition, in cases where the UALL agreement already exists prior to the publication of the MCA Decision under consultation, then the 5-year visibility window will commence on receipt by the OAO of Plan 0

On Exchange Decommissioning

At the outset, the MCA feels that a definition of Exchange Decommissioning will give more clarity to the context of the provisions listed in this section. The MCA is of the view that a decommissioning exercise can take various forms, ranging from a migration of certain services from the exchange to the cabinet, to a total closure of the exchange site. The MCA is of the opinion that the migration scenarios (from exchange to cabinets) are sufficiently catered for through the migration rules featured in section 2.2.3 of this document. The remaining outstanding point relates to the re-location of any remaining services (e.g. backhaul) that can no longer be provided from the exchange following the total closure of the site. The MCA's approach in this regard is to define decommissioning as the total closure of the exchange site.

With respect to the rationale of the customer cut-over rate of 25%, the MCA aimed at setting a rate which when achieved puts credibility behind the network operator's notice of decommissioning. Although the level of this rate was not set on specific scientific criteria, this was used in other European countries.

In addition, with reference to the respondent's reservations on the enforcement of this provision, the MCA is of the opinion that once a decommissioning notice is served to an OAO, GO would be intrinsically confirming that the 25% threshold was reached and this would be subject to the MCA's verification in line to its general powers at law. The MCA would also like to point out that this 25% threshold will apply only when GO opts for a 1-year notice period.

Furthermore, in conjunction to the remarks on the notice period, the MCA would like to point out that the one (1) year notice applies only in those instances where GO would be offering an alternative arrangement coupled with compensation of the eligible migratory costs to the OAO (See 1.2.b/c of Section 2.3.3 of the CD).

Turning to the other respondent's feedback on the claimed contradiction between the provisions of this CD and the prior guidance given by the Authority on Decommissioning, the Authority differs from this view. In the mentioned advice, the MCA had specifically stated that during the eventual consultation document, the Authority would be proposing alternative arrangements to a 5-year mandatory notice period provided that these fall within the parameters of the EU NGA Recommendation. In fact section 2.3.3 of the CD contains the specific alternatives to the 5-year mandatory notice. This position was also consistent with the stance held by the MCA in pre-consultative talks with this respondent, where the Authority, being confronted by the concern of a claimed potential 5-year network freeze, held that it will not be proposing any retrospectively applicable provisions of the 5-year mandatory period without complimenting it with viable alternative arrangements.

Hence with the provision proposed by the Authority in Section 2.3.3 of the CD, a network operator offering unbundled access will not be constrained to give the 5-year notice period if it can offer the alternatives provided for in the referenced section. This scenario remains the same even when applied to a pre-signed co-location agreement.

The MCA would also like to highlight the fact that a provision for the MCA to direct a network operator on the advance notice to be given to the OAO in view of planned network alteration can already be found in the RUO. In fact, section 4 of the main body states that *"in case where any planned network alternation carried out by GO may lead to serious impact on the operations of the OAO, GO shall give advance notice to the OAO as directed by the MCA from time-to-time"*.

For this reason given that the CD offers viable alternatives to a 5-year mandatory notice period, the MCA is proposing to maintain applicability of these provisions as featured in points 4 and 5 of the rules in section 2.3.3 of the CD.

On the other hand, with respect to the respondent's remark on the need to cater for the possibility where an exchange is not fully decommissioned, but part of its service area is migrated to a new point-of-presence, the MCA is of the opinion that such scenario is already catered for in the CD since point 1.2 (b/c) of Section 2.3.3 (of the CD) caters for a migration to an equivalent interconnection level or the movement to the next possible level (e.g. from MDF level to cabinet).

The MCA feels also the need to put forward its opinion on the term of duration of co-location agreement referenced by this respondent in its feedback related to decommissioning. The MCA believes that the contractual clauses featured in any co-location agreement cannot supersede the general obligations and provisions emanating from the RUO in its totality. In this regard as long as any site remains listed in Annex I of the RUO, an OAO cannot be refused access to such facility. In addition, for any site to be removed from the said list, this has to be preceded by an amendment to the UALL agreement in accordance with Annex B of the reference offer.

2.2.3. MCA's Proposed Decision

In view of the above, the MCA is putting forward for consultation the following changes to the migration rules. For ease of reference the relevant abstracts from the CD are being reproduced hereunder. The proposed changes to this text are being highlighted in track changes.

2.2.3.1. Rules and Obligations emanating from Plan 0 (No Change Scenario) (Section 2.3.1 in CD)

The aim of this section is to lay down the proposed rules and obligations emanating from Plan 0. For ease of clarity and understanding this section does not contemplate the eventuality of a change in plans, but rather assumes that all the information given in Plan 0 stays constant. The proposed rules and obligations to manage the possible

changes to the mentioned plans (Plan 1...i) will in turn be presented in Section 2.2.3.2 (Section 2.3.3 in this document).

2.2.3.1.1 Pre-Reserved space on active cabinets committed for upgrade in the determinate future

Article (29) of the NGA recommendation states that '*NRAs should, where appropriate, organise a prior consultation of alternative operators potentially interested in sharing street cabinets, and on this basis determine where street cabinets should be adapted and how costs should be allocated*'. Furthermore, the current RUO already permits co-location at the sub-loop level where this is technically feasible.

In view of the above, the MCA feels that GO should give the opportunity to OAOs to share the cabinets that GO is planning to upgrade in the determinate future.

The MCA is hereby proposing that for those cabinets that are listed as planned for upgrade in a specific and determinate year of Plan Θ i, GO should offer the opportunity to eligible⁴ OAOs to pre-reserve space in the cabinets in question. This should be subject to the following proposed provisions:

1. At no point in time should GO be requested to alter the specifications of these cabinets. These specifications are to be relayed to the OAO for decision making purposes only and shall not be subject to any request for changes.
2. **The reserved space should be used exclusively to host DSL equipment.**
3. Given that space at the cabinet is limited and co-mingling of equipment cannot take place within respective shelves, the total OAOs request for pre-reserved space must take the form of 'one shelf⁵ space' of GO's current cabinet chassis.
4. If more space is required by an eligible OAO, it is to procure its own cabinet. GO shall not be liable for any civil/permitting requirements related to the instalment of the OAO's own cabinets.
5. **In those instances where in order to service the demand for DSL services GO needs to make full utilisation⁶ of a particular cabinet, and GO being in a position**

⁴ Eligible OAO refers to an authorised undertaking having signed a **full co-location** agreement with GO for a given exchange area either for unbundling or TVA.

⁵ This maximum available space is based on the current cabinet specification chosen by GO. This limit will be revised by the MCA when, and if, the mentioned cabinet specification change.

- to prove this requirement, the OAO will not be entitled to apply for pre-reserved space.
6. Should at any point in time in the future, the need arises for GO to utilise further space within a cabinet (see footnote 6) in which a shelf is already pre-reserved by an OAO, GO will have the right to buy back the IRU from the OAO, on the same conditions that it would have sold it to the same access seeker, except for the fact that the value of the IRU buy-back should however reflect the remaining useful life and fair value of the IRU. The OAO would in that case be required to deploy its own street cabinet. In this case GO is to offer an uninterrupted service for a maximum of one year along the principles laid out in Section 2.2.3. Hence if GO opts to give a 3 month notice then GO needs to offer a TVA service for a maximum of nine months.
 7. Pre-reserved space shall be allotted on a first-come-first-served basis.
 8. The rights for pre-reserved space are non-transferable to third parties.
 9. In Plan θ GO is to insert a note in a prominent position stating that for cabinets tagged as planned for upgrade in the plan, the OAO is entitled to request pre-reserved space.
 - ~~10. A reservation shall be concluded by not later than three months before GO orders the said cabinet and its ancillary components. GO shall therefore give ample notice to the OAO on when it intends to procure the said cabinet such that the OAO will be able to conclude the reservation within the three-months notice referred to above.~~
 11. A reservation shall be concluded by not later than 1 month from the date of cutover notification. The OAO shall be responsible to commence negotiation in good time based on the visibility of GO's migration plans.
 12. In case of anticipations in Plans i, GO shall give the OAO a minimum notice of 2 months prior to the cutover notification. If certain cabinet upgrades are still awaiting approval from GO's Board of Directors, these agreements can be concluded subject to this approval.
 13. The pre-reserved space shall be granted on an Indefeasible Right of Use basis (IRU); hence:
 - a. Upfront committed payments should be made by OAO in exchange to such pre-reserved allotment;
 - b. GO is to price this access according to best practice governing IRU contracts and on a non-discriminatory basis. The pricing of such a

⁶ The term 'full utilisation' refers to a situation where all the shelves are being utilised efficiently to provide commercial services and excludes any spare capacity.

contract may include a recurrent maintenance fee in line with best practice in the field;

- c. GO is to hold sufficiently detailed computations to be able to defend its position in the eventuality of a dispute arising on the price of this pre-reserved allotment;
- d. GO is to make known to the MCA the computations used to determine the IRU price.
- e. GO is to present the access seeker with clear and exhaustive information on the price computation of the IRU so that the OAO is afforded an informed decision.

14. GO should inform the Authority when a similar agreement is reached.

Proposed Decision 3

GO is to grant pre-reserved committed space to those active cabinets that would be listed as committed for upgrade in Plan 0i along the parameters set out in Section 2.2.3.1.1 of this consultation document.

GO is to incorporate these provisions together with the necessary contract and documentation in its RUO under its SLU offer by not later than six weeks from the publication of this decision notice.

The appropriate SLU additions referred to above shall also incorporate appropriate annexes detailing the escorted access to the cabinets by the OAOs authorised personnel.

What are your views on the MCA's Proposed Decision 3? Please indicate the specific numbered sections when commenting on specific aspects of the text in this consultation document.

2.2.3.1.2 Proposed basic rules and obligations on Plan 0

1. For planned cabinet upgrades listed as committed in a particular year of Plan 0 (Category 1 Information in Appendix 1)

- 1.1. GO is to maintain its disposition to offer Full Loop services according to its obligations set in the LLU market analysis currently in force, provided that these are within the parameters of Annex E10 of GO's RUO (Spectrum Management Specification for Systems to be Connected to GO's Copper Access Network).
 - 1.2. When/if the upgrade occurs as planned, **the OAO shall perform the migration of its own subscribers to the cabinet at its own expense ~~and the associated migration costs are to be borne solely by the OAO.~~**
 - 1.3. The OAO is to effectively synchronise with GO and shall at no point, or for any reason, delay GO's migratory plans. The MCA will intervene immediately should issues of this nature arise.
 - 1.4. For those cabinets planned for upgrade (Category 1) in Plan 0, GO is to offer the possibility of a temporary virtual access (TVA) alternative. TVA is being proposed so as to give the OAO a temporary alternative to that of investing at the MDF level for a relatively short period of time. The specifications of this access alternative are laid down in Section 2.4 hereunder.
 - 1.5. TVA is to be offered for a **maximum minimum** of six months following the actual cabinet upgrade is finalised. **If GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept until 9 months after cutover.**
2. **For cabinet upgrades listed as 'considered' or 'indeterminate' in Plan 0 (Category 2 and 3 information in Appendix 1)**
- 2.1. **Go is to maintain its disposition to offer Full Loop services according to its obligations set in the LLU market analysis,** provided that these are within the parameters of Annex E10 of GO's RUO (Spectrum Management Specification for Systems to be Connected to GO's Copper Access Network).
 - 2.2. **For cabinets listed as 'considered'** when the upgrade is to occur, GO is to bear the eligible migration-related costs ('eligible costs' hereafter⁷). The MCA's aim in this regard, is to ensure that an OAO can invest, and be operational, in a timely manner whilst knowing that its investment will not be left stranded by GO's migratory path. This does not mean

⁷ In this respect Section 2.3.3 (Section 2.4 in the CD) hereunder contains a detailed treatment on the principles and nature of these eligible costs as proposed by the MCA.

that all the investment made, or cost incurred, should be eligible for compensation.

- 2.3. The OAO is to effectively synchronise with GO and shall at no point or for any reason delay GO's migratory plans. The MCA will intervene immediately should issues of this nature arise.
- 2.4. GO **can voluntarily** offer TVA. If accepted by the OAO, GO will not be liable for any eligible costs **for cabinets listed as 'considered'**.
- 2.5. **TVA is to be offered for a minimum of six months following the actual cabinet upgrade is finalised. If GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept until 9 months after cutover.**

Proposed Decision 4

GO is to be directed by the rules listed in Section 2.2.3.1.2 (Section 2.3.1.2 in CD) of this **consultation** document. These provisions are to be added and reflected in an appropriate annex/s to the co-location agreement.

What are your views on the MCA's Proposed Decision 4? Please indicate the specific numbered sections when commenting on specific aspects of the text in this consultation document.

2.2.3.2. Rules and Obligations emanating from eventual changes in the cabinet upgrade plans (Change Management) (Section 2.3.2 in CD)

This section of the document contains the basic rules and obligations aimed at managing potential changes in GO's FTTC migratory plans and their impact on the Company's existing wholesale unbundling offers.

This is without prejudice to the MCA intervening in this process if it would have reasons to believe that a systematic pattern of changes reflecting a strategic behaviour to disrupt or influence the OAOs deployment is occurring.

In line with the views expressed in Section 2.1.2 of this document, the MCA considers that in cases where changes to GO's deployment plans are driven by external forces

namely intensive building developments such changes are not considered as such for the purposes of these migration rules. In such instances GO is to seek approval from the MCA on a case-by-case basis.

2.2.3.2.1 Scenario 1: Cabinets Planned/Considered /Indeterminate are anticipated

For cabinets fed by an exchange site, which is in turn covered by a co-location agreement and which would eventually exhibit an **anticipated** migratory path (following Plan Ei) in subsequent updates of Plan 0, GO **would be liable for eligible migratory costs (see Section 2.3.3 (Section 2.4 in CD) for a detailed treatment of these eligible costs)**. In addition the MCA is proposing that in this case, GO offers a TVA solution to the OAO to ensure that OAO has in total 1 year from notice of cutover till TVA switch-off to carry out the works.

The MCA is however proposing that this eligibility window expires on the elapse of a five-year period from the signing of the UALL agreement. In cases where the UALL agreement already exists prior to the publication of the MCA Decision under consultation, then the 5-year visibility window will commence from the submission date of Plan 0 to the OAO. This therefore results in Plan 5 as being the last update of Plan 0 for which GO would be liable for any potential compensation of eligible costs. Annual subsequent updates (Plan 6...i) should still be submitted by GO, albeit purely for visibility purposes. The MCA is of the opinion that a 5-year visibility window, with the safeguards for risks and uncertainty highlighted in this document, is sufficient to safeguard the initial investment of the OAO.

In the case that the **OAO would have opted for TVA** in line with the provisions laid out in Section 2.2.3.1.2 (Section 2.3.1.2 in CD) above, this type of access should be maintained for a minimum of six months following the actual cabinet upgrade is finalised. If GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept for 9 months after cutover.

- ~~• **1 year** following the actual cabinet upgrade, in the case of movement in cabinets listed originally in Plan Ei as Category 1 and 2 (i.e. committed/considered to a specific year in the Plans 1...5); information;~~
- ~~• **2 years** following the actual cabinet upgrade in the case that a cabinet listed as indeterminate (Category 3) in Plan Ei moves to Yr1-3 (Category 1) in plans 1...5).~~

2.2.3.2.2 Scenario 2: Cabinets Planned/Considered are postponed

For cabinets fed by an exchange site which is in turn covered by a co-location agreement and which would exhibit a **delayed or postponed** path (following Plan Ei) in subsequent updates of Plan 0, no eligible migratory costs will be imposed on GO.

In the case the OAO would have opted for TVA in line with the provisions laid out in **Section 2.2.3.1.2 (Section 2.3.1.2 of the CD)** above, this type of access should be maintained for a **minimum of 6 months** following the upgrade of the cabinet in question. **If GO opts to give a 3 month notice prior to cutover, then the TVA offer would need to be kept for 9 months after cutover.**

2.2.3.2.3 Demonstration on the applicability of the change management rules

For ease of understanding, Appendix 2 exhibits a number of examples simulating hypothetical changes in the migration plans and their resulting regulatory outcomes in line with what is being proposed in this consultation document.

Proposed Decision 5

GO is to be directed by the rules listed in Sections 2.2.3.2.1 - 2.2.3.2.3 (Sections 2.3.2.1 - 2.3.2.2 in CD) above. These provisions are to be added and reflected in an appropriate annex/s to the **TVA**/co-location agreement effected by these plans.

What are your views on the MCA's Proposed Decision 5? Please indicate the specific numbered sections when commenting on specific aspects of the text in this consultation document.

2.2.3.3. Rules and obligations related to Exchange Decommissioning (Section 2.3.3 in CD)

In proposing the parameters regulating the decommissioning of exchanges the MCA kept the following Articles from the NGA recommendation at the fore.

Article (39). *"Existing SMP obligations in relation to Markets 4 and 5 should continue and should not be undone by changes to the existing network architecture and technology, unless agreement is reached on an appropriate migration path between the SMP operator and operators currently enjoying access to the SMP operator's network. In the absence of such agreement, NRAs should ensure that alternative operators are informed no less than 5 years, where appropriate taking into account national circumstances, before any de-commissioning of points of interconnection such as the local loop exchange. This period may be less than 5 years if fully equivalent access is provided at the point of interconnection".*

Article (41). *"Where the SMP operator envisages to replace part of its existing copper access network with fibre and plans to de-commission currently used points of interconnection, NRAs should under Article 9(1) of Directive 2002/19/EC ensure that undertakings enjoying access to the SMP operator's network receive all necessary information in timely fashion to adjust their own networks and network extension plans accordingly. NRAs should define the format and level of detail of such information, and ensure that strict confidentiality of the information disclosed is respected".*

In view of the above the MCA is proposing the following rules:

Definition: In the following rules, 'Decommissioning' is defined as the total closure of an exchange site.

1. If an exchange site is to be decommissioned and a co-location agreement exists:

- 1.1 OAO is to be given a five-year notice period.
- 1.2 Earlier decommissioning would be possible provided that:

- a. A minimum notice period of one year is given to the OAO. This notice cannot be given to the OAO unless 25% of GO's customers served by the exchange in question would have already been disconnected.
- b. GO grants access to an alternative site offering the equivalent interconnection level or if this would not be technically possible (or causing disruption in the service provision of GO's clients), offering access at the next most viable type of unbundling (e.g. from MDF level to the Sub-loop).
- c. GO compensates the OAO the eligible migratory costs involved in either an eventual relocation of the same service at an equivalent interconnection level (another exchange site) or the movement to the next possible equivalent level of interconnection (e.g. from MDF level to Sub-loop).
- d. These eligible migratory costs shall be regulated by the same principles laid down in Section 2.3.3 of this document.
- e. The access alternatives offered should be governed by the principle of non-discrimination.
- f. Alternatively to (b.) above, a shorter notice period would also be possible if both parties agree on TVA

2 If an exchange site is to be decommissioned and a co-location agreement does not exist:

- 2.1 A minimum notice period of six months is to be given to OAO. This notice cannot be given to the OAO unless 25% of GO's customers served by the exchange in question would have been already disconnected.
- 2.2 In the case that interest is shown in this site and /or the parties are in the process of signing a co-location agreement, GO is to inform immediately the OAO concerned.

3 Content of Decommissioning Notice: The decommissioning notice shall reflect a concrete state of play with regards to GO's plans related to the site in question. This should be backed by all the relevant information that would give the OAO the required level of confidence that the decommissioning plans are concrete. For this reason, to be considered as such, a decommissioning notice shall not contain uncertain or conditional references to other circumstances occurring, except for any required permits applied for or granted. All relevant documentation shall be given to

the OAO in conjunction with the said decommissioning notice. The decommissioning notice shall also contain the options available to the OAO in line with Section 2.2.3.3 (2.3.3 of the CD) above (particularly 2.2.3.3(1)).

- 4 **Applicability of these rules:** To all present and future sites listed in Annex I of the RUO, including cases of Co-location agreements containing multiple sites, wherein the decommissioning provisions laid out in this section shall apply to each site separately and individually.
- 5 **General:** If any clause/s in the UALL and/or Co-location agreement shall be in conflict with the applicability and the provisions listed in Section 2.2.3.3 (2.3.3 of the CD) above, the provisions in Section 2.2.3.3 (2.3.3 of the CD) of this document shall supersede the provisions found in any of the present UALL and/or Co-location agreements and any future UALL and/or Co-location agreements which have not yet come into force.

Proposed Decision 6

GO is to be directed by the rules listed in Section 2.2.3.3 (2.3.3 of the CD) of this document. These provisions are to be added and reflected in an appropriate annex/s to the co-location agreement/s.

What are your views on the MCA's Proposed Decision 6? Please indicate the specific numbered sections when commenting on specific aspects of the text in this consultation document.

2.3. Principles regulating eligible migratory costs

In the CD the Authority laid down proposed guiding principles that are to regulate the costs that would be eligible for refund from GO.

2.3.1. Responses to Consultation

One of the respondents suggested that the OAO should back any claim it makes with appropriate cost data and justifications. This respondent also pointed out that an OAO could have the opportunity to redeploy DSLAM port cards at other locations and that there is also a significant chance that the chassis itself could be redeployed. This respondent suggested that in order to lower the possibility of such a situation arising, the process should include a period of delay before the eligible cost decision is taken to allow for possible redeployment.

The other respondent was in agreement with the list of items eligible for compensation. On the other hand this respondent pointed out that in certain instances, for example an exchange decommissioning, equipment cannot be redeployed elsewhere as alternative sites would not be directly substitutable (from a business plan perspective) to the site being phased out. This respondent further stated that even if the catchment area of the corresponding exchange site is to be established as the primary domain wherein these assets can be reused, one has to consider that certain equipment might be intended for use inside an exchange site and not in outdoor cabinets.

This respondent was also of the opinion that compensation should be based on the net book value of all related capital expenditure, thus including both the cost of the equipment as well as all the capitalised work which would have been carried out in relation to the implementation specific to that particular exchange.

This respondent also pointed out that the Authority failed to quantify and qualify what it meant when it referred to a situation in which "an exchange site would continue to serve a significant portion of cabinets whilst others would be upgraded".

2.3.2. MCA's Position

The MCA agrees that the OAO should back any claim it makes with appropriate cost data and justifications.

The MCA agrees with the respondent's views that if an asset can be redeployed by the OAO this asset should not be eligible for compensation. At the same time, it is also aware that certain equipment cannot always be redeployed by the OAO. In order to address this issue which could objectively give rise to considerable subjective positions, in the CD the MCA included a provision whereby if a tangible asset becomes eligible for compensation, and such compensation occurs, the ownership of the asset will be relented to GO from then onwards. In the Authority's view this provision should significantly lower the risk that a re-usable asset becomes eligible for compensation, whilst ensuring that any unusable assets are adequately compensated for.

The MCA is in agreement with the principle that the compensation should be based on the net book value of all related capital expenditure as this takes due account of all the costs incurred as well as the number of years the equipment was in use. The underlying accounting rules should however be shown to be consistent with the accounting policies that the OAO uses for similar assets.

With respect to the common costs, the principle the Authority is adopting is that only the avoidable costs are due for compensation. Therefore if the OAO would have incurred a given cost independently of whether it was serving one customer or a hundred, then this cost would only become due for compensation if all the subscribers served by a given exchange site are migrated to Cabinets.

2.3.3. MCA's Proposed Decision

2.3.3.1. Definition and specification of the eligible migratory costs

The MCA is proposing that in principle the costs incurred by the OAO eligible for compensation should be those that were incurred unnecessarily strictly because of the fact that a given migration plan eventually changes. **These cost would have been**

avoided had the OAO known that these original plans were going to be different. These costs shall be eligible for compensation if their underlying assets or service procured cannot in any way be scaled down or re-used elsewhere. These principles shall also apply to the compensation due to an OAO following an upgrade of Category 2 cabinets.

For ease of reference and limited solely to the scope of this consultation document, these general principles are referred to '**avoidable costs principles**' throughout the rest of the document.

The MCA feels that **it is important in-order** to minimise unnecessary disputes on how and where the underlying assets and/or services (risking remaining stranded) can be re-used. ~~as~~ **As** a starting point it is being proposed that the catchment area of the corresponding exchange site is to be established as the primary domain wherein these assets can be reused. This can be subsequently extended further if any of the parties can prove that there is concrete commitment in other exchange sites and hence these assets can effectively be reused elsewhere. Furthermore it is also being proposed that if a tangible asset becomes eligible for compensation, and such compensation occurs, the ownership of the asset will be relented to GO from then onwards.

The avoidable costs principle referred to above shall remain distinct from the characteristics of general common costs. In other words, the avoidable costs principles do not contemplate compensation for assets/services that for any reason were incurred and would still remain in use to service a remaining and significant cluster of cabinets within an exchange area.

For example, if an exchange site would hypothetically continue to serve a **significant** portion of cabinets whilst some others will be upgraded, the common costs incurred at the MDF level shall not be considered as eligible. The avoidable costs principles will also preclude any investment, including the backhaul and DSLAMs, needed at each upgraded cabinet to be considered as eligible costs since these would have been required anyway regardless of the changes in the migratory plans.

On the other hand, the downsizing of backhaul requirements may be considered for eligibility unless this can be used to aggregate traffic from cabinets. By the same token since tie cables in the RUO are ordered in terms of stepped-fixed amounts, a fixed increment that would no longer be required would be eligible for compensation.

~~If justified the relative useful life of the investment may also be considered.~~ It is being proposed that the compensation should be based on the net book value of all related capital expenditure as this takes due account of all the costs incurred as well as the number of years the equipment was in use. The accounting rules used should be proven to be consistent with the practices that the OAO uses for similar assets in operation.

The OAO should back any claim it makes with appropriate cost data and justifications.

In an effort to shed more light on the eligible migratory costs, the MCA is also putting the following list for consultation. This list contains the costs elements that in the MCA's opinion can potentially be considered as eligible for compensation. The list is in no way exhaustive and interested parties are encouraged to give their feedback, particularly by proposing additions and/or omissions thereto.

2.3.3.2. Stylised list of potentially eligible costs

- Racking structures (incl. Space Rental and other related operating costs)
- DSLAMs at exchange
- Tie Cables (including any operational costs related to provisioning)
- Costs related to reconfiguration requirements at OAO's core equipment
- Backhaul at exchange site (e.g. fibre connections, cards etc)
- Co-location Room⁸ (including also MDF blocks)
- Power Supply Meters
- Batteries

Question 2: What are your views on this eligibility list? Please state justifiable reasons for other suggested inclusions and/or omissions

Proposed Decision 7: GO and the eligible OAO shall be guided by the principles and specifications laid down in Section 2.3.3 above when claiming/granting compensation related to migration issues.

⁸ If applicable and if OAO can successfully demonstrate that this was strictly required in the first place.

Do you agree with the MCA's proposed decision 7? Please state your reasons making reference to the applicable sections of the consultation document.

2.4. Specification of the Temporary Virtual Access (TVA)

In the CD the MCA proposed the introduction of the Temporary Virtual Access service. The purpose of the proposed TVA is not to substitute physical unbundling, but rather to bridge the interim period until a specific area is upgraded with active equipment at the cabinet. In this sense, by means of TVA, the OAO would have a possibility to obtain wholesale access without being forced to invest for an unreasonably short time window, whilst on the other hand also affording GO an alternative to that of having to be liable for compensation claims from the access seeker.

The TVA service is distinct from traditional wholesale broadband access (WBA) services. Basically, while WBA remedies empower the OAO to choose itself when to terminate the service (being for the purpose of ceasing operation as well as moving up the ladder of investment), the duration of TVA is finite in nature. Hence from the point of view of an OAO, TVA can hardly be seen as a substitute of WBA service, nor in the MCA's opinion, can it be seen as a long-term substitute for physical unbundling. Moreover there are also technical differences such as the varying number of point of interconnection required in both cases. In fact whereby for WBA services an OAO need only interconnect at one point, with TVA, the OAO would have to interconnect at each exchange area in which it expresses interest.

2.4.1. Response to Consultation

One of the respondents suggested that the MCA should still stipulate certain conditions, mainly by specifying a timeframe within which negotiations between the parties are to be finalised, and also detailing an escalation procedure in the event that an agreement is not reached by the parties. This respondent also highlighted the need to establish the timeframes applicable for the necessary approvals should an OAO opt to use its own Customer Premise Equipment (CPE).

The other respondent expressed strong reservations regarding the introduction of the TVA service. Without prejudice to this position, this respondent suggested that access to TVA should be conditional on prior signature of a co-location agreement for the exchange area. It was also of the opinion that in case an OAO opted to use its own CPEs, the OAO should bear all the costs related to the testing of the new CPE equipment and GO as the

network owner should not be liable to support the OAO's CPE. In particular this respondent highlighted that compensation should not be due in cases which cannot be controlled a priori. For example, in its opinion, the network owner cannot be responsible for potential damage to an OAO's CPE following a network upgrade or interference issues resulting from increased network use. This respondent also invited the MCA to clarify the part dealing with Procedure.

2.4.2. MCA's Position

The MCA feels that as much as possible the TVA agreements are agreed upon on a commercial basis and urges all parties involved to act in good faith. However it expects that agreements, including the CPE qualification, should be concluded over a three-month timeframe.

With respect to the feedback received on the procedure of the TVA service provision, the MCA was of the view, that since no physical unbundling would be taking place at the point of TVA take-up, the co-location agreement would be modified to make reference and formalise the provisioning of a TVA service, hence the term 'modified co-location agreement'. For the avoidance of doubt therefore in this case the 'modified co-location agreement' would be substituting the standard co-location agreement.

Furthermore, the MCA agrees with the respondent's view that the OAO should bear the expense of CPE testing in cases where it opts to deploy its own equipment. In this case prior to the work execution GO is to provide the OAO with a comprehensive estimate of the costs involved.

In conclusion, with respect to the issues raised by a respondent on the ongoing support of the OAO's CPEs, the MCA is of the view that such issues fall within the realms of commercial contractual provisions and hence, given the difficulty in quantifying the potential damages emanating from such a scenario, any redress in this regard should be sought through such channels, as opposed to regulatory provisions.

2.4.3. MCA's Proposed Decision

2.4.3.1. Specifications of TVA

GO already offers wholesale broadband access service on a voluntary basis. The MCA is of the opinion that the technical/operational specifications of TVA can therefore be modelled upon this commercial offer. However, the MCA is hereby highlighting a number of aspects where TVA will be directed to differ.

1. **Speed-capabilities**: TVA is to offer OAOs the capability to compete at the same, non-discriminatory level with GO's retail arm, in terms of speed offered to end users. This also applies to the enhanced capabilities offered by GO's retail arm resulting from any type of network upgrade in the future. These additional speed capabilities are to be made available to the OAO as soon as it is made available to GO's retail arm.
2. **Points of Interconnection**: The point of interconnection for TVA shall in principle be at each available exchange site. This means that if for example the OAO wants to apply for a TVA service in the Birkirkara Exchange area, then it will have to interconnect at that given exchange site. This in effect is another point of differentiation between TVA and WBA, as the latter would only require the OAO to interconnect at a single point of presence. Notwithstanding, this does not exclude that agreement could be reached between GO and the OAO to have distant interconnection at a central point in respect of any exchange.
3. **Duration**: Finite and as stipulated in Section 2.2.3 of this document.
4. **Applicability**: An OAO shall be permitted to avail itself of this offer only if it has signed a UALL agreement. It shall be possible for an operator to avail itself of this offer in conjunction with Wholesale Line Rental (WLR) and Carrier Pre-selection (CPS) currently offered by GO.
5. **Pricing**: No price control obligation is being proposed except for non-discrimination and transparency.

6. **Service Level**: Level of service to be provisioned on a non-discriminatory basis as well as in line with the provisions already applicable in the RUO.
7. **Customer Premises Equipment (CPE)**: OAO to be permitted to use its own CPEs following testing and white-listing from GO's part. **In this case, the OAO shall bear the cost of CPE testing.** This does not exclude the possibility of an OAO making use of GO's own modems.
8. **Procedure**: In case of TVA take-up, a modified co-location agreement is to be drawn up to log the OAO's interest in that particular exchange site. The provisions of the modified co-location agreement should reflect the specifications listed above, including those related to the duration of the TVA as stipulated in Section 2.2.3 of this consultation document. **Agreements, including the CPE qualification, should be concluded over a three-month timeframe.**

Proposed Decision 8: The MCA directs GO to incorporate all the specifications listed in Section 2.4.3.1 above when offering TVA.

Do you agree with the scope and TVA specifications as laid down in section 2.4.3.1 of this consultation document? If not please state your reasons making reference to the applicable sections of the consultation document.

3. 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 13th September 2011. Comments should be sent to:

Mr. Ian Agius
Chief of Operations
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN1913
Malta

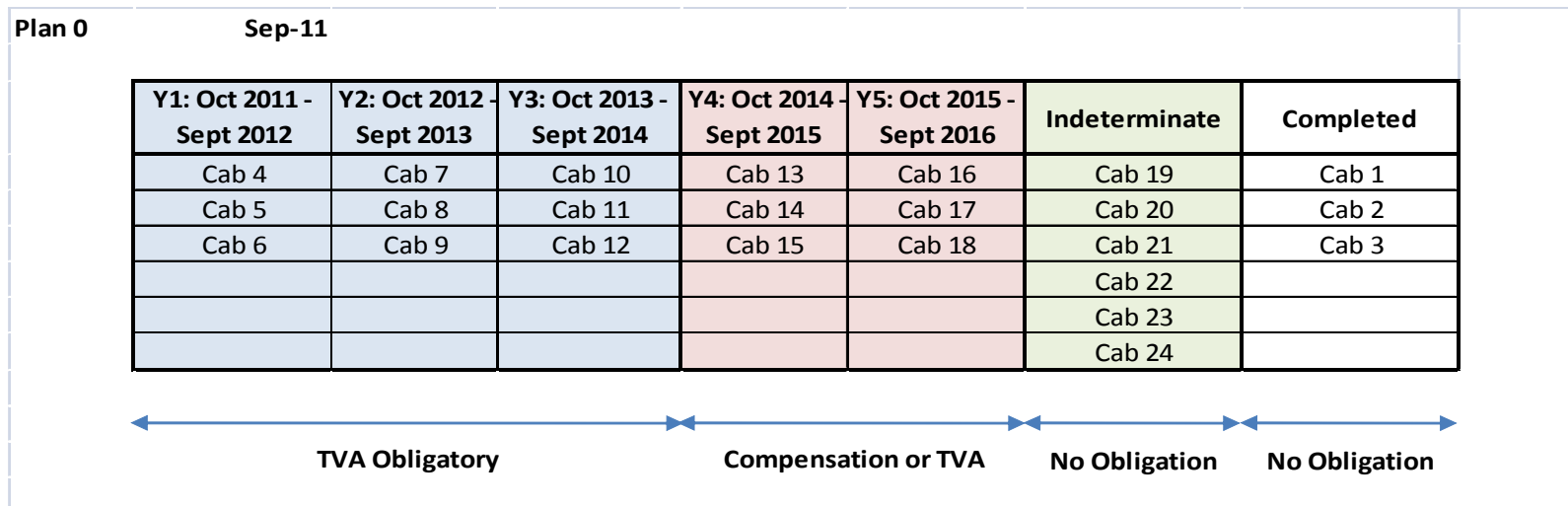
Tel: +356 2133 6840
Fax: +356 2133 6846
Email: coo.mca@mca.org.mt

APPENDIX 2

Example	Time	Cabinet ID & Address	Category 1			Category 2	Category 3	Outcome
			Planned	Planned	Planned	Considered	Indeterminate	
			Yr1	Yr2	Yr3	Yr4/5		
1	t_0	Cab 1.		■			No eligible costs involved : natural movement	
	t_1	Cab 1.	■					
2	t_0	Cab 1.	■				If TVA: keep service (see section 2.2.3.2.2 for duration); If Co-location agreement exist no eligible costs ap	
	t_1	Cab 1.				■		
3	t_0	Cab 1.				■	If TVA: keep service (see section 2.2.3.2.1 for duration); If Co-location agreement exists: GO liable to compensation of eliaible costs and provision of TVA service (See section 2.3 and 2.4 respectivelv for more	
	t_1	Cab 1.	■					
4	t_0	Cab 1.			■		If TVA: keep service (see section 2.2.3.2.1 for duration); If Co-location agreement exists: GO liable to compensation of eliaible costs and provision of TVA service (See section 2.3 and 2.4 respectivelv for more	
	t_1	Cab 1.	■					

APPENDIX 3

The following diagrams outline the information flow over the years. They also illustrate how the obligations will evolve over a 5-year period. In order to simplify the example it is assumed that no changes are affected to the original plans. For the sake of the example it is assumed that Plan 0 is issued in September 2011.



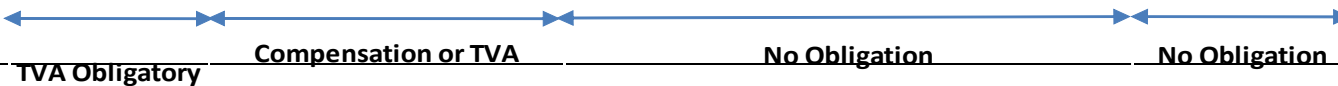
Plan 1 **Sep-12**

Y1: Oct 2012 - Sept 2013	Y2: Oct 2013 - Sept 2014	Y3: Oct 2014 - Sept 2015	Y4: Oct 2015 - Sept 2016	Y5: Oct 2016 - Sept 2017	Indeterminate	Completed
Cab 7	Cab 10	Cab 13	Cab 16	Cab 19	Cab 20	Cab 1
Cab 8	Cab 11	Cab 14	Cab 17		Cab 21	Cab 2
Cab 9	Cab 12	Cab 15	Cab 18		Cab 22	Cab 3
					Cab 23	Cab 4
					Cab 24	Cab 5
						Cab 6



Plan 2 **Sep-13**

Y1: Oct 2013 - Sept 2014	Y2: Oct 2014 - Sept 2015	Y3: Oct 2015 - Sept 2016	Y4: Oct 2016 - Sept 2017	Y5: Oct 2017 - Sept 2018	Indeterminate	Completed
Cab 10	Cab 13	Cab 16	Cab 19	Cab 20	Cab 21	Cab 1
Cab 11	Cab 14	Cab 17			Cab 22	Cab 2
Cab 12	Cab 15	Cab 18			Cab 23	Cab 3
					Cab 24	Cab 4
						Cab 5
						Cab 6
						Cab 7
						Cab 8
						Cab 9



Plan 3

Sep-14

Y1: Oct 2014 - Sept 2015	Y2: Oct 2015 - Sept 2016	Y3: Oct 2016 - Sept 2017	Y4: Oct 2017 - Sept 2018	Y5: Oct 2018 - Sept 2019	Indeterminate	Completed
Cab 13	Cab 16	Cab 19	Cab 20	Cab 21	Cab 22	Cab 1
Cab 14	Cab 17				Cab 23	Cab 2
Cab 15	Cab 18				Cab 24	Cab 3
						Cab 4
						Cab 5
						Cab 6
						Cab 7
						Cab 8
						Cab 9
						Cab 10
						Cab 11
						Cab 12



Plan 4

Sep-15

Y1: Oct 2015 - Sept 2016	Y2: Oct 2016 - Sept 2017	Y3: Oct 2017 - Sept 2018	Y4: Oct 2018 - Sept 2019	Y5: Oct 2019 - Sept 2020	Indeterminate	Completed
Cab 16	Cab 19	Cab 20	Cab 21	Cab 22	Cab 23	Cab 1
Cab 17					Cab 24	Cab 2
Cab 18						Cab 3
						Cab 4
						Cab 5
						Cab 6
						Cab 7
						Cab 8
						Cab 9
						Cab 10
						Cab 11
						Cab 12
						Cab 13
						Cab 14
						Cab 15



Plan 5

Sep-16

Y1: Oct 2016 - Sept 2017	Y2: Oct 2017 - Sept 2018	Y3: Oct 2018 - Sept 2019	Y4: Oct 2019 - Sept 2020	Y5: Oct 2020 - Sept 2021	Indeterminate	Completed
Cab 19	Cab 20	Cab 21	Cab 22	Cab 23	Cab 24	Cab 1
						Cab 2
						Cab 3
						Cab 4
						Cab 5
						Cab 6
						Cab 7
						Cab 8
						Cab 9
						Cab 10
						Cab 11
						Cab 12
						Cab 13
						Cab 14
						Cab 15
						Cab 16
						Cab 17
						Cab 18

