

GO's Reference Unbundling Offer:

Report on Further Consultation and Statement of Decision on the Review of Sub-Loop Unbundling Related Aspects of the Reference Unbundling Offer

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Background

In April 2011, the Malta Communications Authority ('MCA' or 'Authority' hereafter) published a consultation document¹ entitled 'Go's Reference Unbundling Offer - Review of Sub-Loop Unbundling Related Aspects of the Reference Unbundling Offer'. The scope of this consultation was to continue along the path of the RUO review that was initiated in 2010 with a focus on the SLU-related aspects of GO's offer. This consultation presented the overall strategy and justifications on how the MCA intends to carry out the work streams related to GO's SLU offer going forward, as well as consult on the MCA's proposed migration rules to regulate GO's FTTC transition and its impact on the SLU offer.

After analysing the responses, the Authority concluded that whilst some elements of the original consultation could be concluded others required further refinements to take into account the feedback received.

To this effect, on 26 July 2011, the MCA published its response to consultation and further proposals for consultation². The period for further consultation ran till 13th September 2011, with two operators, namely GO Plc and Vodafone Malta Ltd, submitting their feedback.

The aim of this document is therefore to report on the feedback received in the second round of the consultation, put forward the MCA's position on these responses and conclude with the Authority's final decision on the elements consulted upon.

This Decision Notice is structured in two parts. Part 1 features the respondents' feedback followed by the Authority's response and its final decisions and views on the specific issues raised by respondents. Part 1 also includes the Commission's comments following the notification process as stipulated under Article 7 and Article 7A of the Framework Directive.

Part 2 follows with the final version of the migration rules and principles, which are in turn structured around the main blocks contained in the further consultation document, namely:

- Migration Plans Information Flow model
- Migration Rules
- Principles Regulating Eligible Migration Costs
- Specification of the Temporary Virtual Access (TVA)

Each block concludes with the corresponding final decision/s.

The migration rules and principles contained in these blocks have also been 'cleaned' from the tracked changes featured in the further consultation document so as to reflect the final version of each block as well as its corresponding decision/s.

This document contains also a number of supporting Appendices to aid in the explanation of specific elements treated herein.

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

² Link to document MCA/C/11-0434: <http://www.mca.org.mt/consultation/go%E2%80%99s-reference-unbundling-offer-mca%E2%80%99s-position-and-further-consultation-review-sub-loop>

PART 1. REPORT ON FURTHER CONSULTATION AND AUTHORITY'S FINAL POSITION

1. Generic feedback

1.1. Respondents views

One of the operators made reference to the principles of the European Commission's NGA Recommendation ('NGA Recommendation') and the importance for these principles to be kept at the fore by the Authority.

The other respondent reiterated its reservations on the Temporary Virtual Access (TVA) option, which in his opinion was nothing more than Wholesale Broadband Access (WBA) with slight modifications.

1.2. MCA's Position

With reference to the role of the principles of the NGA Recommendation in the work of the MCA, the Authority would like to assure this respondent that as done in the past, it will continue to take utmost account of any recommendations emanating from the European Commission when formulating its regulatory stance. In this regard, the Authority feels that the guidelines and migration rules set forth in this document reflect these principles as it attempts to find the required balance between safeguarding and fostering new investment in access networks, maximising the number of options for access and minimising regulatory uncertainty.

On the other hand, the MCA differs on the other respondent's opinion that differences between Wholesale Broadband Access and TVA are minor ones. Further to the explanation provided by the Authority in the further consultation document, the different technical characteristics between TVA and wholesale broadband access can be summarised as follows:

- **Physical Points of Interconnection:** The point of interconnection for TVA shall be at each available exchange site. On the other hand WBA only requires the OAO to interconnect at a single point of presence.
- **Logical Level of Interconnection:** TVA will operate at the lowest level possible in the network hierarchy as opposed to WBA which allows interconnection even at the IP level.
- **Customer Premises Equipment (CPE):** In TVA the OAO will be permitted to use its own CPEs following testing and white-listing from GO's part. On the other hand the WBA offer permits only the use of GO's modems.
- **Duration:** The duration of TVA is finite i.e. maximum of 9 months after the upgrade of the cabinet has been finalised. On the other hand, the duration of the WBA is unlimited and left at the discretion of the access seeker.
- **Areas of applicability:** TVA is only applicable in the areas where a planned FTTC upgrade is underway, whilst WBA is applicable on a nationwide basis.

For these reasons the Authority feels that the differences from WBA are to say the least material.

2. Specific Feedback

This section reports on the feedback received from respondents on specific sections of the further consultation or its proposed decisions. Proposed decisions not featured in this section reflect an absence of specific negative feedback or reservations in their regard.

2.1. Respondents' views on specific issues or proposed decisions

2.1.1. Information requirement related to streamlining the TVA maximum validity

In its further consultation the MCA had requested detailed information from GO to validate the Authority's proposed 12-month notice period from TVA switch-off in view of the OAO's required time to deploy its own cabinets. This notice period featured in sections 2.2.3.1.1, 2.2.3.1.2, 2.2.3.2.1 and 2.2.3.2.2 of the further consultation document.

In its feedback GO was of the opinion that a 12-month timeframe was rather long and that this only serves the OAO to stay dependent on the TVA. GO proposed also that such timeframe could be shortened after the first year of the OAO operations, reflecting the added experience acquired by the access seeker. However GO did not submit any additional details on its own experience with cabinet deployment.

2.1.2. Proposed Decision 3

In Section 2.2.3.1.1 of the further consultation, the MCA proposed the following decision with respect to Pre-reserved space on active cabinets.

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 *i* along the parameters set out in Section 2.2.3.1.1 of the further 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.

Whilst not objecting to the requirement to present computations to the Authority to back its cabinet IRU prices, one respondent expressed reservations on divulging such information to the OAO given its commercial sensitivity. This respondent suggested that the price of the IRU be examined and agreed upon by the MCA to avoid having to disclose this information to OAOs.

The other respondent was generally in agreement with the concept of cabinet sharing; however it expressed disagreement with restricting the use of cabinet sharing exclusively for DSL services. This respondent was of the opinion that this restriction should be relaxed so that other technologies would be permitted to make use of this sharing facility. This respondent stated also that such a suggestion is in line with the NGA recommendation which does not make a distinction between the regulatory treatments of copper or fibre networks.

This same respondent highlighted the need of Service Level Agreements (SLAs) to cater for escorted access.

2.1.3. Specification of the Temporary Virtual Access

One respondent expressed reservation on the three-month time frame proposed in the specifications for the conclusions of the TVA negotiations. This respondent was of the opinion that the timeframe being proposed is too long and that it would leave room for an access seeker to be less disciplined in terms of its engagement with the access provider.

2.2. MCA's position on the respondents' specific feedback

2.2.1. Information requirement related to streamlining the TVA maximum validity

Since GO did not provide any robust evidence that the notice period for the OAOs cabinet can in effect be shortened given the Company's specific experience in the field, the MCA concludes that the notice period for TVA switch-off should be maintained at 12-calendar months in total. Hence all the relevant references to this notice period will be maintained as proposed in sections 2.2.3.1.1-2 and 2.2.3.2.1-2 of the further consultation document (See also Part 2 Section 2 of this Decision Notice for the related final version of these provisions).

Furthermore the Authority will keep this timeframe under review and reserves the right to amend following more visibility on the actual cabinet deployment process by prospective OAOs.

2.2.2. Proposed Decision 3

In conjunction with one of the respondent's concerns regarding the commercial sensitivity revolving around the disclosure of detailed cabinet cost information to third parties, the Authority agrees in principle on its involvement in validating the pricing being offered. The MCA however is of the opinion that room for commercial agreement should nonetheless be left to the parties involved. Hence the MCA concludes that commercial negotiations should be kept at the fore when setting IRU prices; however if an OAO feels that the Authority's assistance is warranted it can request this formally copying the network operator.

On the other hand, the other respondent's proposal for relaxing the DSL equipment restriction on the sharing of cabinet space merits some qualification. The notion of DSL services in the Authority's proposal reflected the fact that DSL is the mainstream technology used to provide end-user retail data services on GO's copper loops. At this point it is also worth highlighting that the migration rules being consulted upon are meant to facilitate a specific obligation incumbent upon GO, which in turn emanates from one of the markets set forth in the EU Commission's Recommendation of relevant markets³. Based on the current market analysis decision which came in force on the 3rd May 2007, this market is defined as **access to metallic loops and sub-loops for the purpose of providing broadband and voice services**. For this reason any other uses for cabinet sharing apart from gaining access of this copper loop (both full and sub-loop unbundling) is outside the scope of this remedy; and hence these migration rules. Thus, if an operator would like to make use of GO's cabinets for any purpose other than providing retail access services over GO's copper loop, this can be done outside the remit of these guidelines through commercial negotiations. This rationale is also in line with the NGA recommendation which when considering the access obligations in the case of FTTN makes specific reference to the copper sub-loop.

For the avoidance of doubt however, the MCA concludes that given that other technologies might be used to offer end-user services, the specific restriction for the hosting of DSL equipment in Section 2.2.3.1.1 of the further consultation document should be further clarified. The Authority is therefore mandating the following change in text of provision (2.)⁴ of the said section to make specific reference to the fundamental scope of the remedy in question - access to the copper loop.

"For the scope of these migration rules, the reserved space within the cabinet is to be used exclusively to host the equipment required by the access seeker to access GO's metallic loops for the purpose of providing broadband and voice services" .

The above is also without prejudice to any changes required in the future to such facilities sharing following both future market analyses as well as any symmetric obligations that the Authority or any other competent authority might impose in this regard. The MCA therefore reserves the right to effect amendments to these guidelines following such potential regulatory developments.

³ The 2003 Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications and services. Although this Recommendation was revised in 2007, the new version still maintained the same views with respect to LLU and its role to provide data and voice services to end users (See Section 4.2.1)

⁴ Provision (2.) of section 2.2.3.1.1 of the further document read: "The reserved space should be used exclusively to host DSL equipment."

With respect to this respondent's remarks on the need for SLAs on escorted access, the MCA agrees in principle with this view. In fact Proposed Decision 3 already contains a provision for the inclusion of appropriate annexes detailing the escorted access to the cabinets. As shown hereunder, in the final version of Decision 3 the Authority is furthermore mandating a specific reference to adequate SLAs in this regard.

Decision 3

GO is to grant pre-reserved committed space to those active cabinets that would be listed as committed for upgrade in Plan *i* along the parameters set out in Part 2 Section 2.1.1 of this Decision Notice.

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, including also adequate SLAs.

2.2.3. Specification of the Temporary Virtual Access

With respect to the views of one of the respondents with respect to the timeframe for the conclusion of the TVA negotiation, the feedback received in this regard does not provide any basis for the MCA to change the timelines proposed. Nonetheless whilst the Authority notes that adequate channels are available for all parties to escalate any negotiation issues with the Authority it still expects all parties to negotiate in good faith at every stage of the unbundling process.

2.2.4. Rules and Obligations emanating from eventual changes in cabinet upgrades – Scenario 1

Section 2.2.3.2.1 of the further consultation document carried an erroneous reference to Plan 5 as being the last update of Plan 0 for which GO shall be liable for any potential compensation. As demonstrated in Appendix 3 (Appendix 4 of this Decision Notice), this should have read as 'Plan 4'. The following is the corrected version of the related paragraph in this section. The correct version of this paragraph is also found in Part 2 Section 2.2.1.

"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 this Decision Statement, then the 5-year visibility window will commence from the submission date of Plan 0 to the OAO. This therefore results in Plan 4 as being the last update of Plan 0 for which GO shall be liable for any potential compensation of eligible costs. Annual subsequent updates (Plan 5...i) are still to be submitted by GO, albeit purely for visibility purposes".

3. Response Received from EU Commission

This section reports on the feedback received from the European Commission.

3.1. Commission's views

The Commission welcomed the MCA's proposed migration rules which, in line with the NGA Recommendation, put in place a transparent framework enabling Alternative Network Operators (ANOs) to receive in good time all the necessary information on the SMP operator's network upgrades and exchange decommissioning, thus providing them with the means to adjust their own networks accordingly.

The Commission also welcomed, in principle, the imposition of TVA, an interim remedy which could ensure that the upgrade of GO's network does not lead to stranded investments by ANOs. The Commission nevertheless expressed concern that such a remedy will be imposed, at least for a period of nine months, over an FTTC network, whereas the relevant product market 4, as defined in 2007, currently excludes fibre-based access products.

The Commission therefore invited the MCA to clarify in its final measure that imposing TVA is necessary, in order to render the overall regulation effective, and also to proceed with its full review of the wholesale infrastructure access market as soon as possible and carefully to justify the scope and duration of the TVA remedy once the relevant product market has been properly assessed.

In this respect, the Commission also invited the MCA, in the forthcoming review of market 4, to assess the need to impose TVA as a permanent virtual access product, should the remedies currently imposed, namely the SLU obligation, not prove sufficient to address the competition problems identified in the market.

The Commission also recalled that, in accordance with recital 30 and recommendations 29 and 30 in the NGA Recommendation, whenever the SMP operator is rolling out FTTC, the NRA should impose an SLU remedy which is to be supplemented by appropriate backhaul (e.g. fibre and Ethernet backhaul) and ancillary remedies, in order to render the remedy effective. The Commission therefore invited the MCA to ensure that the SLU obligation, which will remain in place after the upgrade to FTTC has been carried out, is properly supplemented by adequate backhaul.

3.2. MCA's Position

The MCA has taken note of the comments raised by the Commission in its letter.

The MCA would like to put forward its position with respect to the Commission's views on the imposition of a remedy over an FTTC network in a market that, as currently defined, excludes fibre-based access products. In the current market analysis decision which came in force on 3rd May 2007, the market is defined as access to metallic loops and sub-loops for the purpose of providing broadband and voice services. Therefore the MCA is of the opinion that the *vires* to facilitate/provide access at a sub-loop level (implicitly over an FTTC network) is already incorporated within the scope of the current market definition.

In the relevant section of the decision (Part 2 Section 4) the MCA also sought to address the Commission's request for clarity vis-à-vis the need to impose TVA in order to render the overall regulation effective.

In conclusion, the MCA will continue to take utmost account of the Commission's views related to the wholesale infrastructure access market also in the upcoming market analysis.

PART 2. FINAL DECISIONS AND MIGRATION RULES

1. Migration Plans Information Flow Model

1.1. Level 1 Information

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

1. Number of inactive cabinets (cabinets that do not house active DSL equipment) per exchange
2. Number of active cabinets per exchange
3. Average number of terminated secondary pairs 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 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 Authority in this regard.

1.2. Level 2 Information

1.2.1. 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 2 (Panel A) of this document.

As shown in the stylised extract therein, the report should be split 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 2, 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 is directly or indirectly linked with the signature of the UALL agreement.

1.2.2. Compilation of Plan 0 and Refresh Rate

So as to minimise as much as possible the effort required to produce this report, the structure of the report should be similar to that of the periodical network updates that GO submits to the Authority. Plan 0 should be finalised and submitted to the OAO within one month from the publication of this Decision Notice. The Authority shall be kept in copy of this submission.

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, 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.

1.3. Level 3 Information

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 site⁵ 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 document⁶, 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 hereunder. This process will on the other hand ensure that GO will be free to effect any changes in other areas of 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 one calendar week of the signing of the corresponding collocation agreements. The above information shall be provided by

⁵ 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.

⁶ E_i refer to a given number of individual sites upon which a co-location agreement exists between GO and the OAO.

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 Authority in this regard.

1.4. Detailed Synchronisation information on cabinet upgrades and other additional requests for information

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. 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'). 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 1.1 – 1.3 above, the MCA remains amenable to intervene and mediate between the parties in conjunction with any additional information requests that the OAO might have.

Decision 1:

The MCA hereby mandates the information flow model detailed in Part 2 Section 1 of this Decision Notice 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 ten 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.

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 Part 2 Section 1 of this Decision Notice with immediate effect following the publication of this decision notice.

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

2. Migration Rules

2.1. Rules and Obligations emanating from Plan 0 (No Change Scenario)

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 rules and obligations to manage the possible changes to the mentioned plans (Plan 1...i) will in turn be presented in Section 2.2.

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

GO shall give the opportunity to OAOs to share the cabinets that GO is planning to upgrade in the determinate future.

For those cabinets that are listed as planned for upgrade in a specific and determinate year of Plan i, GO shall offer the opportunity to eligible⁷ OAOs to pre-reserve space in the cabinets in question. This shall be subject to the following 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. For the scope of these migration rules, the reserved space within the cabinet is to be used exclusively to host the equipment required by the access seeker to access GO's metallic loops for the purpose of providing broadband and voice services to end-users.
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 shelf⁸ 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 utilisation⁹ of a particular cabinet, and GO being in a position to prove this requirement, the OAO will not be entitled to apply for pre-reserved space.
6. 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;

⁷ Eligible OAO refers to an authorised undertaking having signed a co-location agreement with GO for a given exchange area either for unbundling or TVA.

⁸ 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.

⁹ 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.

- 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 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.
7. Should at any point in time in the future, the need arises for GO to utilise further space within a cabinet (see footnote 9) in which a shelf is already pre-reserved by an OAO, GO shall 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. Hence if GO opts to give a 3 month notice then GO shall offer a TVA service for a maximum of nine months.
 8. Pre-reserved space shall be allotted on a first-come-first-served basis.
 9. The rights for pre-reserved space are non-transferable to third parties.
 10. In Plan i 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.
 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. GO should inform the Authority when a similar agreement is reached.

Decision 3

GO is to grant pre-reserved committed space to those active cabinets that would be listed as committed for upgrade in Plan i along the parameters set out in Part 2 Section 2.1.1 of this Decision Notice.

GO is to incorporate these provisions together with the necessary contract and documentation in its RUO under its SLU offer by not later than ten 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, including also adequate SLAs.

2.1.2. 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 2)

- 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.
- 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 4 hereunder.
- 1.5. 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.

2. For cabinet upgrades listed as 'considered' or 'indeterminate' in Plan 0 (Category 2 and 3 information in Appendix 2)

- 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' hereafter¹⁰). This does not mean 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 Authority 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.

¹⁰ In this respect section 3 hereunder contains a detailed treatment on the principles and nature of these eligible costs.

Decision 4

GO is to be directed by the rules listed in Part 2 Section 2.1.2 of this Decision Notice. These provisions are to be added and reflected in an appropriate annex/s to the co-location agreement.

2.2. Rules and Obligations emanating from eventual changes in the cabinet upgrade plans (Change Management)

2.2.1. 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 **shall be liable for eligible migratory costs (see section 3 for a detailed treatment of these eligible costs)**. In addition, GO shall offer a TVA solution to the OAO to ensure that the OAO has in total 1 year from notice of cutover till TVA switch-off to carry out the works.

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 this Decision Statement, then the 5-year visibility window will commence from the submission date of Plan 0 to the OAO. This therefore results in Plan 4 as being the last update of Plan 0 for which GO shall be liable for any potential compensation of eligible costs. Annual subsequent updates (Plan 5...i) are still to be submitted by GO, albeit purely for visibility purposes.

In the case that the **OAO opts for TVA** in line with the provisions laid out in Section 2.1.2 above, this type of access shall 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 shall be kept for 9 months after cutover.

2.2.2. 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 shall be imposed on GO.

In the case the OAO opts for TVA in line with the provisions laid out in Section 2.1.2 above, this type of access shall 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 shall be kept for 9 months after cutover.

2.2.3. Subsidiary general provision

The above shall be 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 OAO's deployment is occurring.

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 Authority on a case-by-case basis.

Decision 5

GO is to be directed by the rules listed in Part 2 Sections 2.2.1-2.2.3 of this Decision Notice. These provisions are to be added and reflected in an appropriate annex/s to the TVA/co-location agreement effected by these plans.

2.3. Rules and obligations related to Exchange Decommissioning

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 shall 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 3 hereunder.
 - e. The access alternatives offered shall be governed by the principle of non-discrimination.
 - f. Alternatively to (b.) above, a shorter notice period shall 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 2.3 above (particularly 2.3 (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 2.3 above, the provisions in Part 2 Section 2.3 of this Decision Notice 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.

Decision 6

GO is to be directed by the rules listed in Part 2 Section 2.3 of this Decision Notice. These provisions are to be added and reflected in an appropriate annex/s to the co-location agreement/s.

3. Principles regulating eligible migratory costs

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 changed. **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 decision, these general principles are referred to as '*avoidable costs principles*' throughout the rest of the document.

In determining how and where the underlying assets and/or services (risking remaining stranded) can be re-used, it is decided 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 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 cluster of cabinets within an exchange area.

For example, if an exchange site would hypothetically continue to serve a 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.

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.

A list of the costs elements that can potentially be considered as eligible for compensation is provided hereunder.

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 Room¹¹ (including also MDF blocks)
- Power Supply Meters
- Batteries

Decision 7: GO and the eligible OAO shall be guided by the principles and specifications laid down in Part 2 Section 3 of this Decision Notice when claiming/granting compensation related to migration issues.

¹¹ If applicable and if OAO can successfully demonstrate that this was strictly required in the first place.

4. Specification of the Temporary Virtual Access (TVA)

The aim of TVA is to render the overall remedy effective. TVA in this measure is not to substitute physical unbundling, but rather a solution to bridge the interim period until a specific area is upgraded with active equipment at the cabinet. TVA minimises the access seeker's uncertainty on the operational viability of its business plan by permitting customer acquisition to start as early as possible, whilst permitting a smooth transition process afterwards. Moreover it affords GO an alternative to that of having to be liable for compensation claims from the access seeker.

For these reasons the TVA is a necessary measure in order to render the overall regulation effective.

The TVA offer shall have the following features:

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. 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 Part 2 Section 2 of this Decision Notice.
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 applied 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 Part 2 Section 2 of this Decision Notice. Agreements, including the CPE qualification, should be concluded over a three-month timeframe.

Decision 8

The MCA directs GO to incorporate all the specifications listed in Part 2 Section 4 of this Decision Notice when offering TVA.

APPENDIX 1. Information Flow Model explanatory note

Figure 1 hereunder depicts a schematic summary of the information levels referred to in Part 2 Section 1. As seen hereunder the information submitted is gradated with the level of commitment between the parties.

Figure 1. Information Flow Model

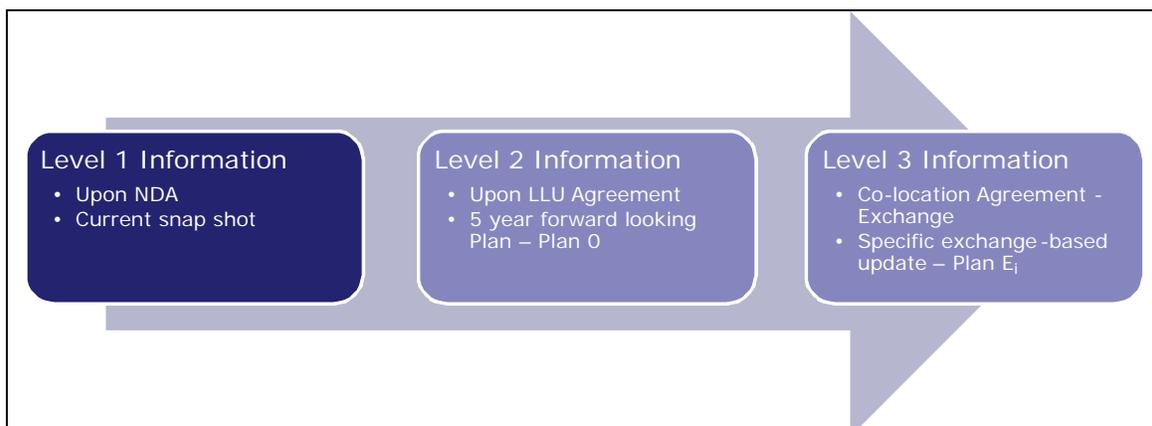
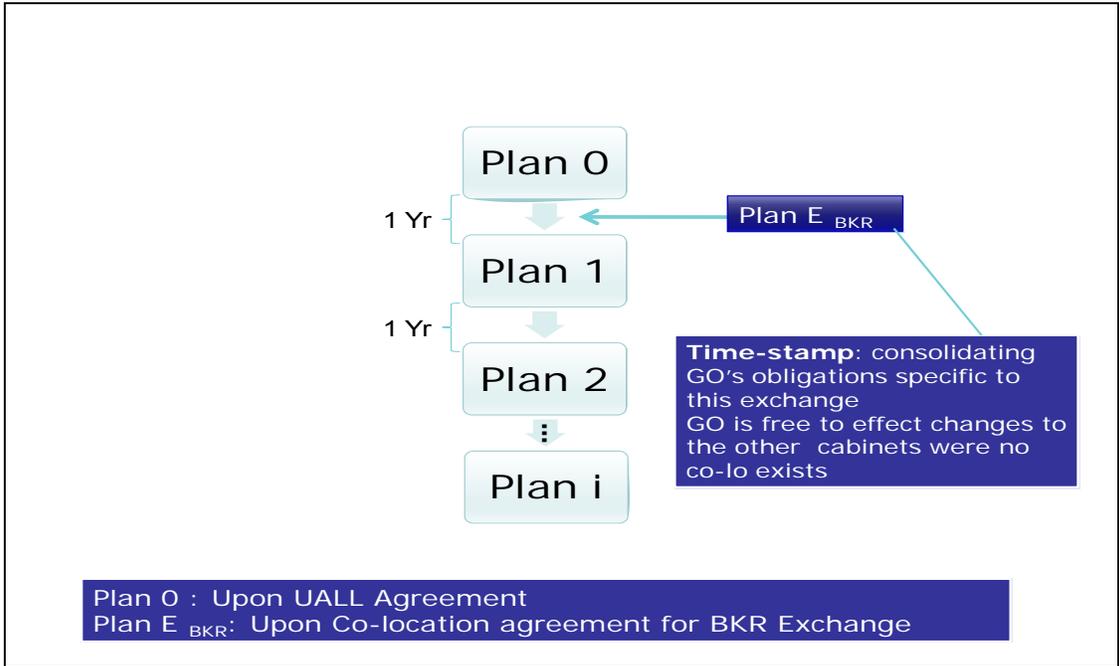


Figure 2 on the other hand shows the relationship between Level 2 and 3 information. It shows the forward looking plans being refreshed at 12-month frequency starting from Plan 0 as well as a hypothetical example of a co-location agreement being signed at a determinate point in time after Plan 0 for the Birkirkara exchange (Plan E_{BKR} is in this case substituting the generic Plan E_i referred to in Part 2 Section 1.3). 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 Part 2 Section 2 of this Decision Notice.

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



APPENDIX 3 Examples on the applicability of the change management rules

Appendix 3 exhibits a number of examples simulating hypothetical changes in the migration plans and their resulting regulatory outcomes in line with this decision.

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 Part 2 Section 2.2.2 for duration); If Co-location agreement exist no eligible costs	
	t ₁	Cab 1.				■		
3	t ₀	Cab 1.				■	If TVA: keep service (see Part 2 Section 2.2.1 for duration); If Co-location agreement exists: GO liable to compensation of eligible costs and provision of TVA service (See Part 2 Section 3 and 4 respectively for	
	t ₁	Cab 1.	■					
4	t ₀	Cab 1.			■		If TVA: keep service (see Part 2 Section 2.2.1 for duration); If Co-location agreement exists: GO liable to compensation of eligible costs and provision of TVA service (See Part 2 section 3 and 4 respectively for	
	t ₁	Cab 1.	■					

APPENDIX 4: Example on how obligations evolve over a 5-year span

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 0		Sep-11					
Y1: Oct 2011 - Sept 2012	Y2: Oct 2012 - Sept 2013	Y3: Oct 2013 - Sept 2014	Y4: Oct 2014 - Sept 2015	Y5: Oct 2015 - Sept 2016	Indeterminate	Completed	
Cab 4	Cab 7	Cab 10	Cab 13	Cab 16	Cab 19	Cab 1	
Cab 5	Cab 8	Cab 11	Cab 14	Cab 17	Cab 20	Cab 2	
Cab 6	Cab 9	Cab 12	Cab 15	Cab 18	Cab 21	Cab 3	
					Cab 22		
					Cab 23		
					Cab 24		



Timeline labels below the table:

- TVA Obligatory**: Covers Y1, Y2, and Y3.
- Compensation or TVA**: Covers Y4 and Y5.
- No Obligation**: Covers the Indeterminate period.
- No Obligation**: Covers the Completed period.

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**

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

