



# Market analysis of the provision of postal services in Malta

Definition, assessment of SMP & regulation of relevant markets

**Consultation document**

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## Executive summary

The Malta Communications Authority (MCA) is hereby presenting its consultation document on the market definition of the postal sector in Malta and the preliminary conclusions on the competitive situation in the relevant postal mail markets. By way of the preliminary conclusions reached at market analysis stage, the MCA is outlining its proposals for regulatory intervention in these markets.

To this effect, the MCA is inviting stakeholders to provide their feedback to this national consultation exercise, which shall run between the 30th of September and the 11th of November 2019.

The MCA will take into account all responses received prior to publishing its final decision.

### Preliminary conclusions at market definition stage

Each postal mail market identified in this market review includes all products that are regarded as being sufficiently interchangeable or substitutable from a supply-side and demand-side standpoint. The relevant product market would therefore comprise all those products and services that are substitutable, not only in terms of the price and the intended use of the product under investigation, but also in terms of the overall conditions of supply and demand.

Central to the market definition procedure in the current review are the characteristics of the postal mail services that are currently offered in Malta, whereby markets were defined on the basis of identified differences in these characteristics. Also, in the previous round of market reviews, the hypothetical monopolist test was used to define a market by establishing the closest substitute to the product being considered by evaluating what would happen if there was a small but significant, lasting increase in the price of a given product, assuming that the prices of all other products remain constant. The current review does not however rerun this test given that postal rates in the identified postal markets are regulated by the MCA by way of the SMP designation imposed on MaltaPost. The current review does however address the pricing aspect, but at market analysis stage to assess to what extent postal rates charged by courier-based operators would constrain MaltaPost's pricing behaviour absent regulation.

In view of the above, the MCA has identified the following postal markets in Malta:

- Market 1: Domestic Single Piece Letter Mail Market
- Market 2: Outbound Single Piece Letter Mail Market
- Market 3: Domestic Registered Letter Mail Market
- Market 4: Outbound Registered Letter Mail Market
- Market 5: Domestic Bulk Letter Mail Market
- Market 6: Outbound Bulk Letter Mail Market
- Market 7: Domestic Parcel Post Market
- Market 8: Outbound Parcel Post Market

The postal delivery of standard letter mail and standard parcel mail is carried out under sufficiently similar conditions of competition, subject to common constraints in terms of pricing and marketing arrangements, and common conditions of supply across the national territory. This means that the relevant postal markets that are listed above are national in scope.

More details on the definition of the postal markets in Malta are contained in Chapter 2 of this document.

#### **Preliminary conclusions on the assessment of competition**

The MCA assessed whether any authorised postal undertaking has significant market power (SMP) in the postal markets identified in this review. In so doing the MCA split the analysis of these eight markets in two main clusters, namely the letter mail markets (Markets 1 to 6) and the parcel post markets (Markets 7 and 8).

The assessment is forward-looking in nature, based on an evaluation of market conditions by reference to the following criteria:

- Market share;
- Barriers to entry and potential competition:
  - Vertical and horizontal integration;
  - Economies of scale and scope;
  - Extent of collection and distribution network.
- Countervailing buyer power.



The MCA determines that MaltaPost enjoys SMP in all the letter mail markets (i.e. Markets 1 to 6) and the market for outbound parcel mail (i.e. Market 8). Of significance is that MaltaPost has high market shares in all of these markets and that no alternative operator seems to be in a position to erode this market power within the timeframe of the review.

More specifically to Markets 1 to 6, the MCA considers that these markets are subject to high barriers to market entry, such that the MCA does not consider new market entry to be viable or realistic in the timeframe falling under the purview of this analysis. Also, consumers have little to no ability, absent regulation, to influence MaltaPost's pricing behaviour in these markets given that no equivalent alternative postal provider exists. This holds true even in the domestic registered mail market, since Premiere Post only provides services to the Local Enforcement System Agency (LESA) via a commercial agreement. The MCA does not expect that competition conditions in any of the identified letter mail markets will change sufficiently within the timeframe of this review.

As for the parcel mail markets, the MCA considers that MaltaPost does not satisfy the criteria required for SMP status in the domestic parcel mail market (i.e. Market 7). This is because, when discussing market developments, the MCA has shown that express mail providers (including MaltaPost's own express parcel service) offer domestic prices that are competitive, and sometimes cheaper, than the regulated price implemented by MaltaPost for its standard domestic parcel mail service, thus making it possible for consumers to successfully constrain MaltaPost's pricing behaviour in a deregulated Market 7.

However, the MCA still maintains the SMP finding on MaltaPost in Market 8, which concerns the provision of postal mail services for outbound parcel mail. This is because competition in the express segment has not developed sufficiently as to effectively constrain the pricing behaviour of MaltaPost in this market. In fact, postal rates for express outbound parcel mail are still significantly higher than the regulated postal rates implemented by MaltaPost for the delivery of standard outbound parcel mail.

Full details of the MCA's main conclusions on the competition assessment are contained in Chapter 3 of this document.

### **Proposed regulatory approach**

Given the position of dominance held by MaltaPost in all of the letter mail markets (Markets 1 to 6) and the outbound parcel mail market (Market 8), the MCA is imposing the following remedies on MaltaPost:



- Obligation to provide services at a price based on a mechanism established by the MCA;
- Obligation of non-discrimination;
- Obligation of provision of services on an unbundled basis;
- Approval and publication of tariffs; and
- Accounting separation.

The MCA however considers that MaltaPost no longer holds SMP in the market for domestic parcel mail, given the strong indirect competitive constraints that would be posed by courier-based postal operators on the pricing behaviour of MaltaPost in a deregulated environment. The MCA therefore considers it reasonable and appropriate to withdraw ex ante regulatory obligations currently in force on MaltaPost in Market 7 as per the MCA Decision entitled 'Market Review for the Postal Sector: Parcel Post Markets, Determination of Market Power and Setting of Remedies'<sup>1</sup> published in March 2014.

This withdrawal shall however be implemented without prejudice to any other general obligations at law or remedies emanating from any other MCA decision, including:

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<sup>1</sup> Link to MCA Decision: <https://www.mca.org.mt/sites/default/files/decisions/postal-market-review-parcel-post-markets-final-decision.pdf>



- the obligations on MaltaPost as the Universal Service Provider (USP), with the criteria on which the universal postal service being set in the Postal Services Act;
- the rights of the consumer with respect to access to services;
- the guarantee of daily delivery; and
- the publication of information of what is on offer by MaltaPost, such as about the universal postal services that are provided, and the prices and conditions pertaining to them.

In order to have a smooth transition from a regulated to a non-regulated environment for Market 7, the MCA shall withdraw the relevant existing obligations at the expiry of 90 calendar days following the publication of the relevant decision. Current obligations would continue to be in effect during these 90 calendar days. Following withdrawal of ex ante regulatory obligations the MCA will keep monitoring market developments and intervene again if deemed necessary.

In order to have a smooth transition from a regulated to a non-regulated market environment, the MCA shall withdraw the relevant existing obligations at the expiry of 90 calendar days following the publication of the relevant decision. Current obligations would continue to be in effect during these 90 calendar days.

Full details of the MCA's proposed regulatory approach are contained in Chapter 4 of this document.

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## 1 Introduction

### 1.1 Purpose of this review

The Malta Communications Authority (MCA) is hereby defining the relevant postal markets in Malta, on the basis of which it will carry out an assessment of competition and market power in these markets. This exercise is in line with the MCA's regulatory efforts to develop and maintain fair and effective competition in the Maltese postal sector, within the parameters of the MCA's published ex-ante regulatory framework entitled 'Regulating the Postal Sector in a fully Liberalised Market'<sup>2</sup>. This ex-ante regulatory framework outlines the procedure for carrying out market reviews for the postal sector, which is being adopted in the current market review.

The MCA's assessment of competition and market power in the relevant postal market(s) will determine the approach to ex ante regulatory intervention. The MCA shall designate one or more postal operators as having significant market power (SMP) where competition is not deemed effective, imposing on such postal operator(s) appropriate regulatory obligations, or maintain and amend such obligations where these already exist. On the other hand, if an identified postal market is deemed to be effectively competitive, the MCA would not implement ex ante regulatory intervention in the relevant market. In case of an already regulated market, a finding of effective competition would translate in the withdrawal of some or all ex ante regulatory obligations.

### 1.2 Structure of the Document

Section 1 sets out the general objectives of the current market review and outlines the relevant legal parameters, alongside an overview of market structure and high-level market trends.

Section 2 defines the relevant postal market(s) in Malta and outlines their main characteristics.

Section 3 encompasses both a quantitative and a qualitative assessment to determine whether or not the defined market(s) are competitive.

Section 4 outlines the obligations that are currently in place in the postal market(s) under investigation and the proposed regulatory approach following the conclusions of the market analysis.

### 1.3 Legal Background

The MCA's mandate for the regulation of postal services in Malta derives from the Malta Communications Authority Act, Cap 418, as determined by the Postal Services Act, Cap 254. In view of this mandate the MCA's objective is to:

- safeguard sustainable competition in the postal sector;
- ensure that postal undertakings provide a transparent, valuable service to users whilst adhering to incumbent social obligations; and

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<sup>2</sup>Reference: <https://www.mca.org.mt/consultations-decisions/regulating-postal-sector-fully-liberalised-market-consultation>



- contribute to the development and implementation of postal policy.

With these goals in perspective, the MCA seeks to develop and maintain fair and effective competition in the postal sector, within the context of a liberalized market, setting forth rules to facilitate the entry of new postal operators; and to subsequently prevent abuse by postal operators that are not constrained by competitive market forces.

#### 1.4 The MCA's Market Review Procedure for the Postal Sector

The MCA's procedure for carrying out postal market reviews is regulated by the Postal Services (General) Regulations [SL254.01 of the Laws of Malta]. As stated in 64A<sup>3</sup>(1) of these Regulations:

*"...the authority shall define the relevant postal services markets within the scope of the universal service appropriate to national circumstances [...] the Authority may at any time as it may deem necessary, after having defined a postal services market in accordance with regulation 64A, carry out an analysis of such market."*

On the designation of SMP, the regulation states that:

*"A postal service operator shall be deemed to have SMP if either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately users."*

Postal operators designated with SMP status have to comply with regulations in 64E and 64I of the Postal Services Regulation<sup>4</sup>. Such regulation is applied ex-ante and aims to implement cost-oriented pricing, terms and conditions, and other regulatory interventions to promote competition, disincentivize monopolization, safeguard consumer interests, and ensure non-discriminatory and transparent business practices.

In view of the above, the market review procedure encompasses three distinct stages:

- The definition of the relevant market or markets;
- The assessment of competition in each market, and the designation of SMP as or if required; and
- The application or assessment of regulatory obligations / remedies that are imposed on any operator(s) designated as having SMP.

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<sup>3</sup>See 64A(1) <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

<sup>4</sup> See 64E and 64I <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

## 1.5 The MCA's First Round of Postal Market Reviews

The MCA's first round of market reviews for the postal sector was carried out in 2013, with the main finding being that the designated Universal Service Provider (USP), namely MaltaPost, had SMP in all the letter mail markets and parcel mail markets (i.e. in all markets falling within the scope of the universal service in Malta). These markets are outlined in the table below:

Type of mail	Market	Description	SMP operator
<b>Single Piece Letter mail</b>	1	Domestic letter mail	MaltaPost
	2	Outbound letter mail	MaltaPost
<b>Registered mail</b>	3	Domestic letter mail	MaltaPost
	4	Outbound letter mail	MaltaPost
<b>Bulk mail</b>	5	Domestic letter mail	MaltaPost
	6	Outbound letter mail	MaltaPost
<b>Parcel mail</b>	7	Domestic parcel mail	MaltaPost
	8	Outbound parcel mail	MaltaPost

Table 1: Postal markets in Malta defined by the MCA in 2013

The criteria assessed at market analysis stage included: (i) market share developments; (ii) barriers to entry, including vertical and horizontal integration; (iii) economies of scale and scope; (iv) the quality and extent of the distribution network; (v) potential competition; and (vi) countervailing buyer power.

In view of the conclusions at market analysis stage, the MCA imposed on MaltaPost a suite of regulatory obligations to prevent anti-competitive practices from this market player. These are:

- Provision of services at cost-oriented prices;
- Non-discrimination;
- Provision of services on an unbundled basis;
- Approval and publication of tariffs; and
- Accounting separation.

The imposition of the above-mentioned remedies is meant to safeguard the interests of end-users and to ensure that postal service providers can compete on a fair basis with the USP, such as to derive maximum benefits for the consumer in terms of choice, price and quality.



The relevant MCA Decisions are entitled (i) 'Designation of MaltaPost Plc as having Significant Market Power (SMP) in the postal markets' published in December 2012<sup>5</sup>; (ii) 'Market Review for the Postal Sector: Letter Mail Markets' published in October 2013<sup>6</sup>; and (iii) 'Market Review for the Postal Sector: Parcel Post Markets, Determination of Market Power and Setting of Remedies'<sup>7</sup> published in March 2014.

## 1.6 Market Structure and High-Level Market Developments

Full market opening of the postal sector in Malta took place on the 1st of January 2013. To this effect, the area reserved for MaltaPost, as the incumbent designated USP, was completely abolished and new entrants could start offering end-to-end services for all postal services. In other words, as of 2013, any undertaking could provide services in any postal market in Malta.

Under the Postal Service Act (Cap. 254 of the Laws of Malta), the provision of postal services within the scope of the universal service necessitates an individual licence granted by the MCA. Meanwhile, the provision of postal services outside the scope of the universal service area necessitates that an undertaking provides a notification of general authorisation to the MCA.

The MCA has the duty to ensure the stable provision of the universal postal service, whilst considering the need for such a service to be financially sustainable and efficient.

### 1.6.1 Market Players

A total of twenty-eight (28) authorised undertakings of postal services were registered with the MCA at the end of April 2019. Currently, two (2) of these authorised undertakings are licensed to provide services within the scope of the universal postal service<sup>8</sup>, as per below:

- MaltaPost plc, and Premiere Post Ltd.<sup>9</sup> are licenced to provide both services within and outside the scope of the universal postal service. MaltaPost is referred to as the Universal Service Provider (USP).

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<sup>5</sup> Link to MCA Decision: <https://www.mca.org.mt/sites/default/files/decisions/FMO%20-%20SMP%20Designation%20MaltaPost%20Plc%20-%20Decision.pdf>

<sup>6</sup> Link to MCA Decision: [https://www.mca.org.mt/sites/default/files/decisions/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets\\_%20Final%20Decision.pdf](https://www.mca.org.mt/sites/default/files/decisions/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets_%20Final%20Decision.pdf)

<sup>7</sup> Link to MCA Decision: <https://www.mca.org.mt/sites/default/files/decisions/postal-market-review-parcel-post-markets-final-decision.pdf>

<sup>8</sup> A full list of authorised postal undertakings is available on the following link: <https://mca.org.mt/sites/default/files/pageattachments/2019.04.08%20Register%20-%20Postal.pdf>

<sup>9</sup> Premiere Post Ltd was issued with a licence to operate services within the scope of the universal service in March 2007. Premiere Post Ltd is authorised to provide postal services which are not reserved but fall within the scope of the universal service as defined in the Postal Services Act. Premiere Post Ltd currently delivers the majority of the traffic summons issued by the local wardens via a registered type of postal service.

- In addition to the two licensed operators another 26 undertakings (including providers of 'Postal Article Forwarding Services' or 'PAFS')<sup>10</sup> are authorised to provide only postal services falling outside the scope of the universal services,<sup>11</sup> mainly courier and express-based services.

Every authorised undertaking of postal services must set out procedures, standards, and policies regarding the process of handling of complaints made by postal service consumers. In particular, these can relate to loss of mail, theft, damage to the postal article, or other quality of service considerations, the most common being mis-delivery or failed attempt at delivery. The MCA ensures that procedures set by the respective postal service providers are sufficient and contain appropriate information to secure the effective protection of consumers.

The MCA monitors compliance by the USP and other authorised undertakings of postal services in relation to the protection of the integrity and security of mail, access to universal postal services, complaints handling procedures and compensation schemes, as well as quality of service.

#### 1.6.2 General Market Trends<sup>12</sup>

The main developments observed in recent years for the postal sector include the following:

- An overall year-on-year decline in postal mail volumes, primarily as a result of electronic substitution negatively affecting mail volumes in the universal postal service, particularly for single piece letter mail and bulk letter mail.
- The importance of letter packet and parcel delivery services to both business and consumers is increasing due to eCommerce. Overall, growth in eCommerce related activity boosted incoming and outgoing international parcel mail and packet mail volumes. Such volumes have gone up for both established and newly authorised undertakings of postal services.
- Inbound and outbound international parcel mail and packet mail has over time been generating more revenue on a piece-by-piece basis. In fact, whilst the rise in inbound and outbound mail volumes did not fully compensate for the total drop in volumes for single piece letter mail and bulk letter mail, revenue-wise the sector registered a marginal increase.

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Also of note is that, in 2010, DHL International was granted a 10-year licence to provide 'universal' postal services, including a basic courier service. However, DHL International rescinded its 'universal' postal services licence in the first quarter of 2019.

<sup>10</sup> These providers of PAFS, which use their delivery network to distribute postal articles to its customers in Malta, are providing a postal service falling outside the scope of the universal postal service. The MCA Decision entitled 'Postal Article Forwarding Services (PAFS) - Regulating the delivery of postal articles', published on the 7th February 2019.

<sup>11</sup> In line with the Postal Services Act, Chapter 254 of the Laws of Malta, a general authorisation notified to the MCA is required to solely provide postal services outside the scope of the universal postal service.

<sup>12</sup> All figures outlined in this document are based on data submitted to the MCA by postal service providers on a quarterly basis.

Comparing the years 2012 and 2018, MaltaPost's revenues related to the universal postal service were consistently up from €15.7 million to €19.3 million. Meanwhile, the non-universal service (US) revenues generated by all authorised undertakings of postal services in Malta nearly doubled during the same period, rising from €6.9 million in 2012 to €12.3 million.

- The high-level of cross-border purchases by Maltese consumers from retailers overseas and efforts by local businesses to reach clients abroad is resulting in further competition in the delivery of inbound and outbound packets and parcels. Postal Article Forwarding Services (PAFS) providers<sup>13</sup> have emerged from the significant growth in eCommerce and changing consumer purchasing habits. These providers are distinct from conventional end-to-end cross-border postal services and operate by introducing a third party to the postal delivery chain<sup>14</sup>, their authorisation as postal service providers under the Postal Services Act, Chapter 254 of the laws of Malta, signals a more dynamic competition landscape in this segment of the market.

The above-mentioned developments will feature in the analysis of the competition dynamics in the Maltese postal sector, as outlined in Chapter 3 below.

## 1.7 Market Monitoring

The MCA constantly monitors trends in postal markets and seeks to ensure that its market review decisions remain relevant in view of changing market circumstances.

The data contained in this document has been submitted directly to the MCA by all authorised undertakings of postal services in Malta, in line with requirements of a quarterly request for data. This regular collection of market information and statistics allows the MCA to independently conduct the above-mentioned monitoring and market review procedure.

The MCA also carries out public and business perception surveys concerning the provision of postal services in Malta to supplement the regular collection of market information and statistics. The purpose of these surveys is to understand how the needs of the end-user (both consumers and businesses) are changing over time and how the services provided by authorised undertakings of postal services are meeting these needs, especially in terms of service quality and price. The latest round of surveys was carried out in 2018 and 2019.

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<sup>13</sup> Definition of PAFS providers is provided in the following MCA Decision: <https://www.mca.org.mt/consultations-decisions/postal-article-forwarding-services-pafs>

<sup>14</sup> A customer (the sender) in country A buys a postal service to convey an item from country A (outgoing) to country B (incoming). The postal operator in country A is supplying the collection portion (of a postal article originating from the sender in country A) of an end-to-end postal service supplied 'into country B' and the postal operator in country B is providing the delivery portion (i.e. to the recipient in Country B) of the same end-to-end postal service.

## 2 Market Definition

Chapter 254 of the Laws of Malta underlines that the term "postal services" means services involving the clearance, sorting, transport and distribution of both domestic and cross-border mail.

Further to the above, the ex-ante regulatory framework refers to a postal article as follows:

*“[A postal article is an] article (also referred to as a postal item) addressed in the final form in which it is to be carried by the postal operator. In addition to items of correspondence, such items also include books, catalogues, newspapers, periodicals and postal parcels, however so described, including packages containing merchandise with or without commercial value.”*

The detailed definitions of these markets can be found in the MCA's published ex-ante framework for regulating competition, called: 'Regulating the Postal Sector in a fully Liberalised Market'. The markets are defined on the basis of a substitutability assessment, taking into account a number of factors as explained in both the regulatory framework and in previous MCA decisions.

The main distinctions between different postal service activities in Malta are outlined hereunder.

### 2.1 Domestic mail vs Cross-Border mail

Postal mail items are processed and dispatched on the basis of the geographic destination indicated by the sender. If the sender asks for the delivery of the postal mail item to a domestic (or local) postal address (i.e. Malta to Malta), the relevant activity is referred to as a domestic mail service. This is because both the sender and the intended recipient of the postal mail item reside in Malta.

However, if the sender asks for the delivery of the postal mail item to a postal address located in a foreign territory, the relevant activity is referred to as outbound cross-border mail service. Cross-border delivery of a postal article may also happen vice-versa, i.e. the delivery of a postal article originating from a foreign destination to an address located in Malta. This activity is referred to as inbound cross-border mail service. In other words, inbound cross-border mail, in Malta's case, would cover all mail originating outside Malta, while outbound cross border mail constitutes of mail items dispatched from Malta to a foreign territory i.e. to a destination address in a foreign jurisdiction.

In view of the above, the domestic mail service is deemed to be distinct from inbound cross-border and outbound cross-border mail services given the different end-user requirements. If the intended recipient lives in Malta, for example, there is no practical reason for a sender located in Malta to address the relevant postal article to a non-Maltese address, irrespective of market demand elasticity or price-points. The MCA therefore concludes that domestic mail services fall into a separate market to that encompassing inbound cross-border mail services or outbound cross-border mail services.

## 2.2 Inbound cross-border mail vs outbound cross-border mail

Inbound cross-border mail encompasses all postal mail items originating from a foreign address whose intended recipient is a Maltese addressee. In contrast to this, outbound cross-border mail constitutes all mail originating from a Maltese address whose intended recipient is a foreign addressee.

On the demand side, there is no substitution between these two kinds of mail, for much the same reasons presented in the argument above that delineates the domestic and cross-border markets. If an intended recipient lives in some country, there is no good reason as to why the sender ought to address the mail to another country, once more irrespective of demand elasticity or prices.

Notably, there are operational and regulatory aspects of inbound and outbound cross-border postal activities that need to be taken into account. From a regulatory standpoint, authorised undertakings are subject to international regulation, be it standard international law for operators designated under the Universal Postal Union (UPU), or bi- and multi-lateral legal frameworks otherwise.

With reference to the inbound market the MCA notes that the remuneration for the distribution of inbound cross-border mail is subject to international agreements (in the case of a Universal Postal Union [UPU] designated operator) or bilateral/multilateral agreements. Consequently, the prices, terms and conditions for the delivery of inbound cross-border mail services are not established by the local postal operator but dictated by international negotiations.

However the MCA notes that, contrary to the inbound cross-border mail service, the outbound postal service originates from a sender in Malta, thus the price, terms and conditions are established by the postal operator in Malta. In this case, the state of play for the local postal operator is different as it can leverage its market position over the local user of the postal outbound service. Likewise the local postal operator can negotiate favourable terms with international postal operators to further cream the market.

In view of the above, the MCA is of the opinion that outbound cross-border mail services fall into a separate market to that encompassing inbound cross-border mail services. Also, the MCA considers that the current review does not delve further with respect to inbound cross-border mail services given that these are already regulated via and subject to bi- or multi-national negotiations and agreements between postal operators.

## 2.3 Standard mail vs Express mail

A standard mail service consists of the clearance, sorting, transport and delivery of both domestic (or inland) postal mail items and cross-border postal mail items (cross-border referring to incoming and outgoing mail). In the case of the former, the intended recipient would have a residence address in Malta and, in the latter case, the intended recipient or sender would have an address in a foreign territory.

The term standard mail therefore encompasses all types of mail falling within the scope of the universal service<sup>15</sup>. These standard mail services do not provide for certainty and guarantee as to the exact day or time.

Express mail or courier services are accelerated postal services (i.e. the expedited collection, transport and delivery of postal articles) characterised throughout the supply of the service by a degree of speed, tracking and managerial control that exceed that applied to the fastest standard category of the basic letter post and parcel service.

The MCA uses the following definition when determining whether a service shall be classified as an express mail service:

- Express mail services consist of the faster and more reliable acceptance/collection, handling, transportation and distribution of postal articles when compared to that of the fastest standard category of the basic postal service.
- In addition to the greater reliability and speed throughout the supply of the service, an express mail service must also include a number of supplementary characteristics such as guaranteed pre-set delivery time as agreed between the express mail service provider and the sender of the postal article; priority handling, tracking and managerial control throughout the supply of the service (i.e. from acceptance to delivery); and additional value-added features over the standard mail services involving, amongst others, the possibility of a premium price for a better quality of service.

In general, therefore, express postal mail services exhibit distinct service characteristics associated with standard mail services, particularly in terms of a high degree of reliability and in terms of guaranteed delivery. The MCA thus concludes that customers opting for express services do so, on the basis of these requirements and, in principle, would be prepared to pay a higher price for these services (in the context of a higher price being paid for a service characterised by additional value added).

Given the above, the MCA considers that the delivery of standard postal mail items and the delivery of express postal mail items fall under distinct markets.

## 2.4 The composition of standard mail activity

In line with the Postal Service Act, the MCA regulates the specification of the standard mail items that fall within the scope of the universal postal service, distinguishing between letter mail and small packet mail (weighing up to 2 kilograms per item and adhering to certain restrictions with regard to size) and parcel mail (the latter weighing up to 31.5 kgs for the non-universal service and up to a maximum weight of 20kg within the universal service)<sup>16</sup>, alongside the quality of the service that has to be offered by the authorised undertaking in the delivery of the universal postal service.

<sup>15</sup> Refer to Postal Service Act, Article 17B on 'Postal services within the scope of the universal services.

<sup>16</sup> See sub section 2.4.2.

#### 2.4.1 Letter mail

The letter mail category encompasses postal mail items within the universal service weighing up to 2 kilograms (per item) and adhering to established size parameters alongside other letter mail items that are delivered outside the scope of the universal service. The latter type of mail items are not bound by the weight and size parameters of the universal service.

Currently only MaltaPost, the designated USP, is offering a postal service for the delivery of letter mail and small packet mail within the universal service, although other undertakings authorised for the provision of postal services may enter in this segment of postal mail activity.

It is relevant to underline that by way of the MCA Decision published in 2008 and entitled '*Maltapost Plc's Universal Service Obligations - Accessibility, Daily Delivery, Provision of Information*<sup>17</sup>' the designated USP in Malta, namely MaltaPost, must provide a service for the delivery of letter mail items and small packet mail items to everyone and every organisation in Malta<sup>18</sup>. Also of relevance is that the postal delivery of small packets encompasses the conveyance of addressed single piece letter post items including books, newspapers, periodicals, magazines, catalogues, and other small packets governed by the same pricing structure and the terms and conditions for the single piece letter mail service. Consequently, this suggests that at the present time the single piece letter mail market also incorporate small packets. The MCA also notes that to date MaltaPost itself does not account separately for letters, large envelopes and small packets. In fact MaltaPost do not provide separate statistics for each of these single piece letter mail segments.

An important distinction to underline at this stage is between single piece letter mail and bulk letter mail. The MCA's Decision highlighted above defines bulk mail as a service (within the universal postal service) whereby residents and businesses may opt to present 50 postal letter mail items or more for posting via MaltaPost's network, according to stipulated specifications (identical format, size and of the same weight step) and without the need to affix stamps. However, authorised undertakings of postal services may choose to start offering a bulk mail service that is not necessarily bound by the specifications outlined in the MCA's Decision entitled '*Maltapost Plc's Universal Service Obligations - Accessibility, Daily Delivery, Provision of Information*'.

Another type of letter mail relates to when the end-user requires proof that a postal article has been delivered, whether locally or overseas. In such instance, the end-user would need to use a registered letter mail service. Such a service would require the signature of the recipient upon delivery of the postal mail item.

In line with the 2008 MCA Decision highlighted above, the USP service provider is required to offer this kind of service from its postal offices, allowing for an easily identifiable tracking system by allocating a bar-coded label containing a unique registration mail number (for example, RR 123456789 MT) on the end-user's postal mail item. A copy of the same bar-coded label is attached on a 'Registered

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<sup>17</sup> Link to MCA Decision: <https://www.mca.org.mt/sites/default/files/decisions/postal-uso-decision-final-sep-08.pdf>

<sup>18</sup> MaltaPost should also adhere to the basic requirements of the universal service as set out in the Postal Services Act.

Mail Card' and handed over to the end-user after being date-stamped. The end-user would have to keep this card just in case of an enquiry on the registered item or should proof be needed that a 'registered mail' item has been purchased. MaltaPost also allows the end-user to track the registered postal article by selecting the 'Track and Trace' feature on its website<sup>19</sup>. A successful delivery of a registered postal mail item by MaltaPost would require the signature of the recipient upon delivery of the postal mail item.

It is also relevant to underline that the actual regulated postage prices for bulk letter mail items and registered letter mail items delivered within the universal service vary on the weight of the item. Again, as with the case of single piece letter mail and bulk letter mail, any authorised undertaking of postal services may start offering a registered letter mail service within the universal service, upon authorisation by the MCA, or outside the scope of the universal service.

Therefore, in view of the above, the MCA considers that the different types of postal letter mail items serve different end-user preferences and requirements. Meanwhile, the USP service provider is obliged to adhere to different standards when processing and delivering the different postal mail items identified in this section.

Given also that the sender of a letter mail item can either ask for delivery to a local postal address (i.e. Malta to Malta) or to an address located in a foreign territory (Malta to other country), the current review has to distinguish between 'domestic mail' items and 'cross border mail' items. This distinction would apply for all types of letter mail items outlined in this section, as follows:

- domestic single piece letter mail;
- cross-border single piece letter mail;
- domestic bulk letter mail;
- cross-border bulk letter mail;
- domestic registered letter mail; and
- cross-border registered letter mail.

The domestic mail postal items are deemed distinct from the cross-border mail postal items, depending on the geographic location of the intended recipient.

It is also noted that the inbound cross-border mail will not feature in the current review, for reasons already explained in Section 2.1. Additionally, service providers in foreign jurisdictions do not fall within the remit of the MCA whilst the local postal operator will only act as an intermediary to complete the

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<sup>19</sup> There are also additional features with the registered mail option, such as the availability of the 'Advice of Receipt' (AR) Card. This card will be signed by the recipient at the delivery address upon receipt of the postal article and posted back to the sender. The end-user can also ask for 'Proof of Delivery', which would require the postal service provider to provide a copy of the recipient's signature, as well as an official letter stating the date of delivery. This service is not available for international mail. These additional features are available at an additional fee that has to be paid by the sender of the registered postal article.

final leg of an inbound cross-border mail delivery. The MCA therefore finds no need to define inbound cross-border mail markets.

Of significance is that the agreements for cross-border mail delivery between foreign and local postal operators are reached on a voluntary basis. This means that foreign postal operators can choose to conclude cross-border agreements with any local postal operator(s) for the delivery of inbound cross-border mail, thus leaving the local postal operator with limited influence over the price, terms and conditions offered by the foreign postal operator. Likewise, the local postal operator would not be able to leverage its market power over the foreign sender. It is also relevant to underline that, although MaltaPost is the UPU designated operator, other postal operators have concluded specific agreements with foreign postal operators and are currently offering the inbound cross-border mail service. DHL Malta currently offers inbound cross-border mail services from certain countries, mainly Germany.

#### 2.4.2 Parcel mail

The Postal Service Act (Cap. 254 of the Laws of Malta) refers to parcel mail as *'packages (other than a letter, large envelope or small packet) tendered 'over the counter', either singly or in large quantities'*, having a maximum weight of 20 kilograms. It adds that parcel mail items *'are distinct from letter-post items and transportation freight respectively in consideration to weight and size limits'*. However, a recent change in the definition on what is parcel mail comes from Recital 16 and Article 2 of the Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, whereby it is specified that the maximum weight of a postal package in the express (or courier-based) segment is considered to be an article weighing not more than 31.5kg. This on the basis that heavier items cannot be handled by a single average individual without mechanical aids and therefore such an activity forms part of the freight transport and the logistics sector rather than the postal sector.

On the other hand, letter mail items could only weigh up to 2 kilograms. The end-user may also post a single piece letter mail item in one of the letter boxes available across the national territory. Parcel mail items, on the other hand, are tendered over the counter either singly or in large quantities.

Therefore, from a demand-side perspective, the MCA believes that a service encompassing the delivery of a letter mail item is not substitutable with a service encompassing the delivery of a parcel mail item. At the outset, the MCA notes that the size and weight characteristics of the two types of mail items are inherently different. Also, from a functional standpoint, letter mail items typically consist of a written communication that is individualised for the addressee, such as an invoice, statement of account, postcards or personal greetings. In addition, the letter mail item may include books, newspapers, periodicals, magazines, catalogues, and small packets.

Parcel mail items, on the other hand, are typically designed to be of larger and heavier proportions compared to those typically attributed to letter mail items.

Also, there is a difference between the regulated prices charged for the delivery of letter mail postal articles and the prices charged for parcel postal mail items weighing 2kgs or more<sup>20</sup>. Given this discrepancy, end-users would not switch to parcel mail following a 5 to 10 percent increase in the rates applicable for the delivery of letter mail.

From a supply-side viewpoint, the MCA considers that there is the potential for one-way supply substitution between letter mail postal services and parcel mail postal services. On one hand, no significant additional investment would be required if it is deemed profitable by an authorised undertaking of postal services offering letter mail services to start offering parcel mail services.

On the other hand, it is unlikely for an authorised undertaking offering parcel mail services to start offering letter mail services following a small but significant increase in the price of letter mail. The provision of certain letter mail services involves a process of collection, sorting and delivery which is far more complex than that entailed in the offerings of parcel mail services. Consequently, parcel service operators would have to invest in a nationwide infrastructure for the provision of letter mail post services, which is costly to set-up.

The MCA therefore concludes that the postal mail service for the delivery of parcel mail is distinct to the postal mail service for the delivery of letter mail. Meanwhile, it is noted that parcel mail items can be posted by the sender to a local postal address (i.e. posted Malta to Malta) or to an address located in a foreign territory. For these purposes, the MCA identifies two parcel mail markets, namely:

- the domestic parcel mail market; and
- the cross-border parcel mail market.

It is also noted that the cross-border parcel mail market referred to above specifically addresses outbound cross-border parcel mail. It is recalled that the MCA is not defining markets for inbound cross-border mail in the current market review, for the reasons outlined in sub section 2.3.1 above.

For example, some end-users may be time-constrained to deliver a postal article whilst others may value having a tracking mechanism in place. On the other hand, some end-users would just necessitate sending a postal article without being time constrained whilst other necessitate delivering several postal articles in bulk.

The MCA also takes into account the prices charged for standard mail services and express mail services. This is a particularly relevant aspect at market definition stage in view of the substitutability assessment. In this respect, two different scenarios are addressed below.

## 2.5 The composition of express mail activity

Postal activity related to the delivery of express mail items exhibits distinct characteristics to postal activity related to the delivery of standard mail items within the scope of the universal service. These

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<sup>20</sup> The prices charged by MaltaPost for all mail items weighing less than 2 kgs are based on the regulated price of letter mail, and calculated in letter weight steps.

distinct characteristics are outlined in Section 2.2 above. Basically, postal services for express mail (or courier-based services) entail an accelerated postal delivery service with tracking and managerial control exceeding that applied to the fastest standard category of the standard letter post and parcel service<sup>21</sup>.

However, albeit in a different category, the classification of different types of express mail items needs not depart from what has been identified in the case of standard mail postal activity. This is because the end-user's requirements for an express postal service is a question of time rather than the type of postal item that needs to be posted.

To this effect, the following types of express mail items can be identified:

- domestic express single piece letter mail;
- cross-border express letter mail;
- domestic express bulk letter mail;
- cross-border express bulk letter mail;
- domestic express registered letter mail; and
- cross-border express registered letter mail.

Of course, reference has to be made to the fact that cross-border express mail encompasses inbound mail items. However, for the reasons already specified for standard postal mail, these express inbound cross-border mail items will not be addressed in the current review.

Also, whilst Section 2.2 already underlines why a standard letter mail and parcel mail service falls under a different market to that encompassing an express letter mail and parcel mail service, the pricing issue will not be ignored and will feature at a later stage in the current market review. It is of note that the Postal Service Directive 97/67/EC clearly indicates that “*whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay*”<sup>22</sup>. However, notwithstanding the expected differences in the pricing of express mail items and that of standard mail items, the market analysis section will look at whether there are instances where the price of an express mail item could serve a strong indirect constraint on the behaviour of authorised undertakings of postal services when setting prices for standard mail.

Having said this, however, the MCA recalls that express mail postal services have been operating in a liberalised and competitive environment for a good number of years, so much so that several mail

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<sup>21</sup> The fastest standard category of basic letter post and parcel service relates to the USP's services subject to a next day delivery target (D+1).

<sup>22</sup> Refer to recital 18 of Directive 97/67/EC.



operators are registered in this area. In view of this, the MCA deems that it is not necessary to carry out a competition assessment of the relevant express mail market(s) and that, likewise, no ex-ante regulatory obligations shall apply in the courier-based sphere.

## 2.6 Preliminary conclusion on the market definition

In view of the above, the MCA defines eight (8) relevant postal markets in Malta, which is in line to the markets defined in the MCA Decision published in March 2014, as follows:

- Market 1: Domestic Single Piece Letter Mail Market;
- Market 2: Outbound Single Piece Letter Mail Market;
- Market 3: Domestic Registered Letter Mail Market;
- Market 4: Outbound Registered Letter Mail Market;
- Market 5: Domestic Bulk Letter Mail Market;
- Market 6: Outbound Bulk Letter Mail Market;
- Market 7: Domestic Parcel Mail Market; and
- Market 8: Outbound Parcel Mail Market.

The postal delivery of standard letter mail and standard parcel mail is carried out under sufficiently similar conditions of competition, subject to common constraints in terms of pricing and marketing arrangements, and common conditions of supply across the national territory. This means that the relevant postal markets that are listed above are national in scope.

### 3 Market Analysis

The markets identified in Chapter 1 will be assessed to determine whether any authorised undertaking of postal services has significant market power (SMP) as defined in and required by Regulation 64 of the Postal Services Regulations.

#### 3.1 Background to SMP assessment

According to Regulation 64 of the Postal Services Regulations [SL254.01 of the Laws of Malta]:

*“the authority may at any time as it may deem necessary, after having defined a postal services market in accordance with regulation 64A, carry out an analysis of such market taking into account any guidelines howsoever described by the Authority”<sup>23</sup>.*

It follows that in the absence of effective competition, the MCA shall classify one or more licensed operators as having SMP. The Regulation says that:

*“A postal operator shall be deemed to have SMP if either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately users”.*

Regulation 64B (4) of the Postal Services Regulations additionally states that:

*“where a postal operator has significant market power on a specific relevant postal services market, it may also be designated as have significant market power on a closely related postal services market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the postal operator”.*

In view of the above, a designation of SMP would signal that one or more authorised undertakings of postal services in Malta enjoy a position of dominance in a relevant market. An SMP designation is not permanent and will be removed if the MCA determines through a market analysis that an authorised undertaking of postal services no longer possesses SMP in one or more postal services markets. This would mean that ex ante regulatory intervention in the relevant market(s) would be withdrawn.

The MCA shall also take utmost account of the market review procedure outlined in the postal regulatory framework when carrying out the competition assessment. The presence of a dominant position in a postal market would be determined by reference to an evaluation of the following criteria:

- Market share;
- Barriers to entry:

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<sup>23</sup> Regulation 64C (1) of the Postal Services (General) Regulations.

- vertical and horizontal integration;
- economies of scale and scope; and
- a highly developed collection and distribution network.
- Potential competition; and
- Countervailing buyer power (CBP).

In carrying out the analysis the MCA will also take into account the structural and behavioural aspects of the postal sector and consider evidence of actual market performance in the assessment. In doing so, market factors such as price movements, trends in postal volumes, and external-indirect constraints will be taken into account.

### 3.2 Market share developments

In competition law assessment, market shares are commonly used as a proxy for market power. Since there is a positive association between market share and market power, a first step in the analysis of market power of an undertaking is by measuring its market share.

Although high market shares are not in themselves sufficient to conclude whether an undertaking of postal services enjoys SMP in an identified market, market shares exceeding a certain threshold may give rise to the presumption of market dominance or significant market power (SMP). This notion stems from established European case-law underlying that market shares in excess of 50 percent are in themselves, barring exceptional circumstances, evidence of the existence of a dominant position.

The following sections will focus on the market share analysis, which will be based on figures submitted to the MCA by local postal service providers over the 2012 – 2018 period.

#### 3.2.1 Standard mail markets (excluding express or courier-based activities)

Following the full market opening of the postal sector, which took place on the 1st of January 2013, the area reserved to MaltaPost, as the incumbent designated universal service provider ('USP'), was completely abolished. This meant that other authorized postal operators could compete directly with MaltaPost in all the letter post markets, namely Markets 1 to 6 identified at market definition stage in the current review.

The following sections will address to what extent such competition has effectively materialized in these markets, by outlining market share developments in the relevant markets.

##### (a) Single piece letter mail markets – Market1 and Market 2

MaltaPost is the sole postal operator active in the delivery of domestic single piece letter mail items and in the delivery of outbound single piece letter mail items. No other authorized undertaking of postal services in Malta is providing such a service. It thus follows that MaltaPost enjoys a 100 percent market share in both the market for domestic single piece letter mail (i.e. Market 1) and the market for outbound single piece letter mail (i.e. Market 2).

Given that all mail volumes in Market 1 and Market 2 are accounted for by MaltaPost, all revenue recorded in these markets is fully generated by this operator. Meanwhile, it is relevant to underline that revenues from single piece letter mail activity have been falling over time, which suggests that the relevant markets may not offer a sufficient incentive for the emergence of competition in this segment.

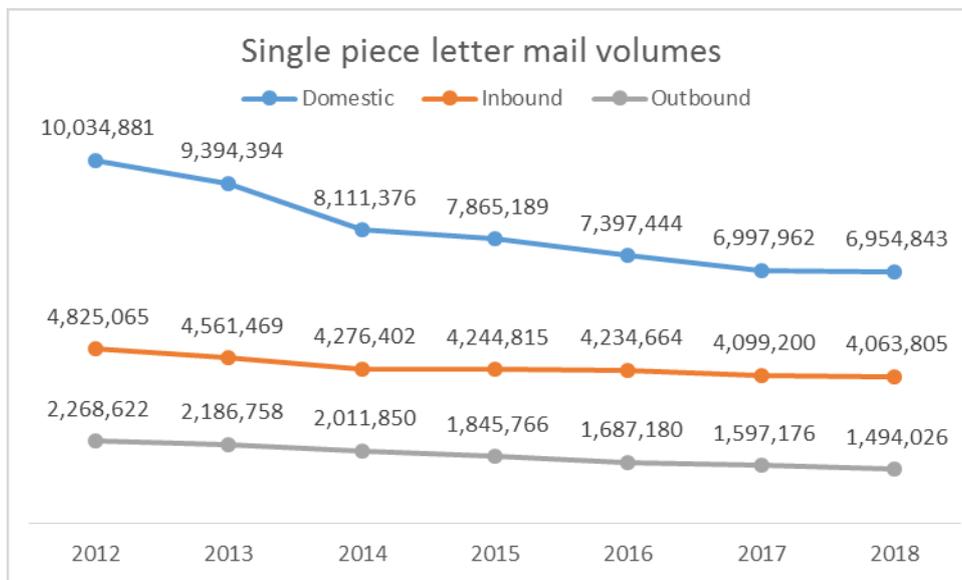


Chart 1: Standard single piece letter mail volumes

The MCA considers that market share outcomes in Market 1 and Market 2 are unlikely to change within the timeframe of this review, with MaltaPost set to maintain a 100% share in these markets.

**(b) Registered letter mail markets – Market 3 and Market 4**

The current review defines two registered mail markets, namely (i) Market 3, which encompasses the delivery of domestic registered letter mail items; and (ii) Market 4, which encompasses the delivery of outbound registered letter mail items.

Premiere Post is the only operator that is competing directly with MaltaPost in the delivery of domestic registered letter mail items. Of note is that Premiere Post’s postal activity depends on the services rendered to one client. Effectively, Premier Post’s business is fully dependent on the delivery of summons on behalf of this client. In principle, Premiere Post can extend its service to other customers. However, to date, the MCA has no evidence of other customers making use of the registered postal mail service provided by Premiere Post. It is worth noting here that MaltaPost’s registered mail service is bound by the USO, whilst the service offered by Premiere Post are not, albeit still fall within the scope of the universal postal service.

Premiere Post’s presence in Market 3 has remained relatively unchanged since 2013, with this postal service provider offering a service to just one client. In 2018, Premiere Post accounted for almost 36% of all domestic registered mail volumes (i.e. mail volumes in Market 3) and around a 20% market share in terms of revenues for this segment.

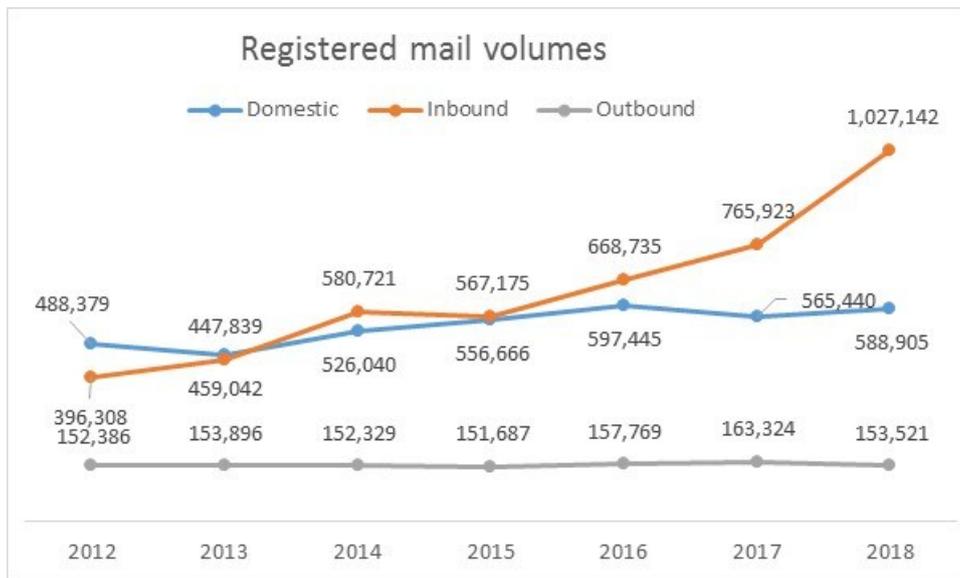


Chart 2: Standard registered mail volumes

Overall, since 2013, MaltaPost has seen no significant change in its share position in the domestic registered letter mail market in Malta (i.e. Market 3). Also, with the current state of play the MCA believes that MaltaPost will not retreat from its market share position during the timeframe of this review. This is because all domestic registered letter mail items, excluding the LESA mail items, are being delivered by this operator. Furthermore, it cannot be completely ruled out that the LESA related postal activity shifts back to MaltaPost. In such case, it would be very difficult for Premiere Post to continue in operation in Market 3, given that this operator has not acquired other registered letter mail users over the years. A loss of the LESA business would jeopardize Premiere Post’s survival in the market.

As for Market 4, the MCA notes that only MaltaPost is active in this market, with this operator being the only undertaking supplying the delivery of outbound registered letter mail. This means that MaltaPost enjoys a 100% market share in Market 4, both in terms of mail volumes and revenues. The MCA again considers that this situation is not likely to change significantly within the timeframe of this review.

Overall, the MCA considers that given the small scale size of the domestic and outbound registered letter mail markets the situation for new entrants is set to be more difficult than it was for Premiere Post. To begin with, Premiere Post has already managed to secure a good share of the domestic registered letter mail market by roping in a large client such as the LESA. But, it seems that Premiere

Post has not managed to expand its client base any further for the past years. Hence, such an outcome may have further limited the scope for new market entry. Furthermore, the MCA notes that there are no other registered letter mail users, similar to the LESA, which alone comprise such a significant share of the market. This in itself already poses a challenge for new entrants to gain significant market share in a short period of time.

**(c) Bulk letter mail markets – Market 5 and Market 6**

MaltaPost is the only authorized undertaking of postal services that is currently active in (i) Market 5, which encompasses the delivery of domestic bulk letter mail items; and (ii) Market 6, which encompasses the delivery of outbound bulk letter mail items. There are no direct competitors to MaltaPost in these markets, despite the ‘reserved area’ for MaltaPost having been removed following the liberalization of postal markets in Malta in 2013. This means that MaltaPost still controls 100% of all mail volumes in Market 5 and Market 6.

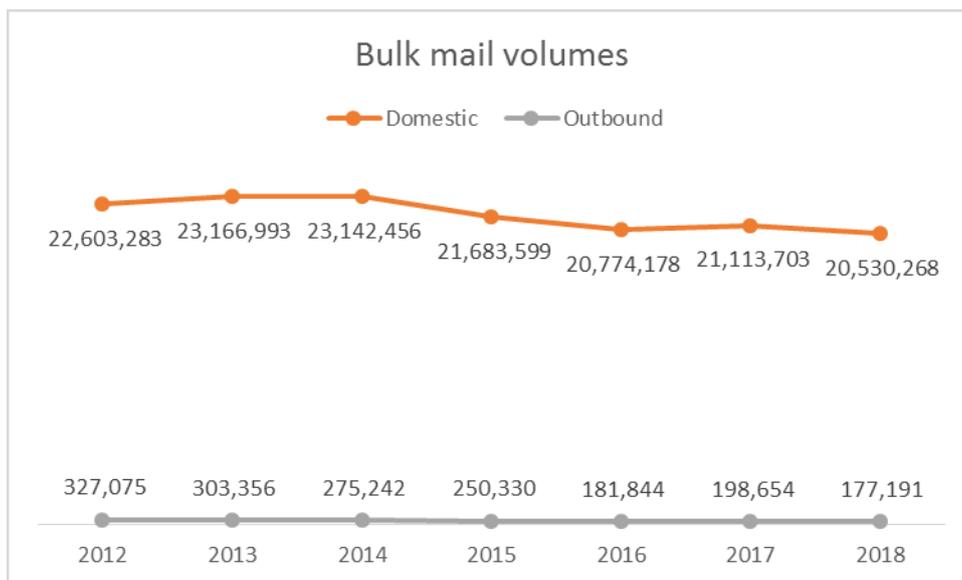


Chart 3: Standard bulk letter mail volumes

Of note is that bulk letter mail volumes accounted for almost 60% of all activity (in terms of mail volumes) recorded in 2018 for the universal postal service area, up from 55.5% in 2012. Also, the bulk letter mail postal service has consistently contributed to an annual average of 35% of all US revenues in the period 2013 to 2018. As only MaltaPost is delivering bulk letter mail items, all revenue generated for this postal segment is accounted for by this operator.

The MCA considers that market share outcomes for MaltaPost in Markets 5 and 6 are not likely to change within the timeframe of this review. No alternative operator has to date expressed any interest with the MCA to start offering bulk letter mail services, which means that new entry is unlikely to materialize within the timeframe of this review. Also of relevance is that electronic media in the

advertising market, such as through social networking sites and other online tools (such as online billing and payment facilities), is most likely contributing to the observed declines in bulk mail volumes. Whilst exact estimates of such an impact are not available, e-substitution is likely to continue unabated within the timeframe of this review, thereby further diluting the incentive for new market entry to materialize.

(d) Parcel mail markets – Market 7 and Market 8

The parcel post markets in Malta have been open to competition for quite some time. However, by way of the market definition in the current review, the standard parcel mail service offered by MaltaPost falls in a distinct market category than that encompassing express parcel mail services offered by several express mail providers operating in Malta.

On the basis of this categorisation, MaltaPost features as the sole postal operator in Malta offering domestic and outbound standard parcel mail services (which means a 100 percent market share in Market 7 and Market 8).

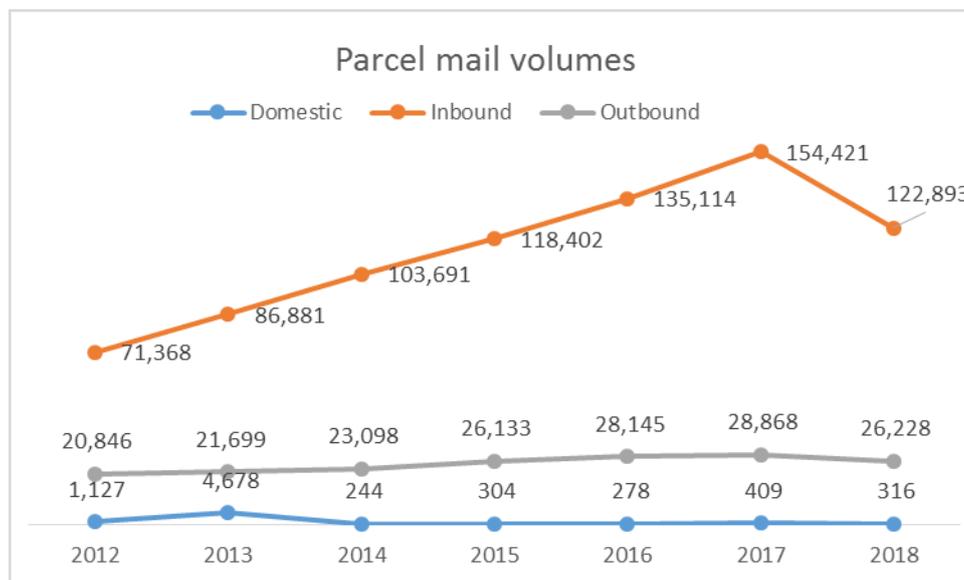


Chart 4: Standard parcel mail volumes<sup>24</sup>

The outcome in Market 6 has to be seen in the context of falling mail volumes, with just 316 domestic parcel mail items delivered in 2018, down from a total of 1,127 mail items delivered in 2012. Meanwhile, the MCA notes that the express domestic parcel mail market saw a rise in volumes, from 35,252 mail items in 2012 to 91,969 mail items in 2018. Of relevance is that MaltaPost is also active in this express domestic parcel mail segment, with alternative providers together sharing not less than 63% of mail volumes recorded annually since 2012.

<sup>24</sup> Of note is that DHL International terminated its license in the last quarter of 2018 to provide postal services within the scope of the universal postal service. DHL International, which is a Deutsche Post DHL brand, had been granted a 10-year licence by the MCA in 2010 to provide 'universal postal services' in Malta, including a basic counter service.

Also in the context of mail volumes, the standard outbound parcel mail market saw mail volumes increase from 20,846 in 2012 to 26,228 in 2018. Of note is that this increase in the standard segment happened alongside a stronger increase in the distinct express segment. In fact, total outbound express parcel mail volumes were up from 26,404 mail items in 2012 to 37,596 mail items in 2018. Again, Maltapost is active in this outbound express mail segment but alternative operators account for not less than 96% of annual mail volumes since 2012.

### 3.2.2 Express mail markets

The provision of express postal mail services is based on a niche postal activity geared on the urgent exchange of physical communications, making additional speed one of the defining characteristics of such services. In general, express mail services are also characterized by a high degree of reliability in terms of guaranteed delivery.

The express mail markets in Malta are deemed competitive, with several authorized market players active in these markets. Demand for express postal mail services has constantly been on the rise in the past years, buoyed by parcel and packet volumes related to growth in online (or eCommerce) purchases.

Express parcel mail volumes (domestic and outbound) rose steadily between 2012 and 2018. In the case of domestic express parcel mail, volumes were up from 35,252 mail items to 91,969 whilst, in the case of outbound express parcel mail, volumes were up from 26,404 mail items to 37,596.

Express letter mail activity has also been buoyant throughout the same period with domestic mail volumes rising from 49,375 items in 2012 to 138,244 items in 2018. Meanwhile, outbound express letter mail volumes were up from 107,781 to 219,357 items during the same period.

As for the 2018 market share in the domestic express mail segment, MaltaPost accounted for 28.8% of all letter mail items and for 22.3% of all parcel mail items. This goes to show that alternative postal providers in the domestic express mail segment account for the lion's share of all postal deliveries.

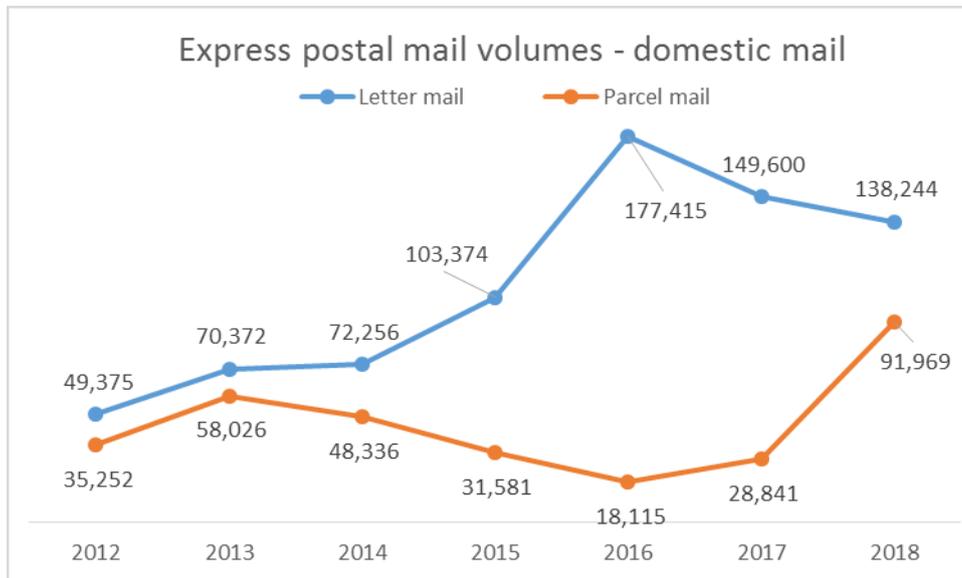


Chart 4: Express mail volumes - domestic

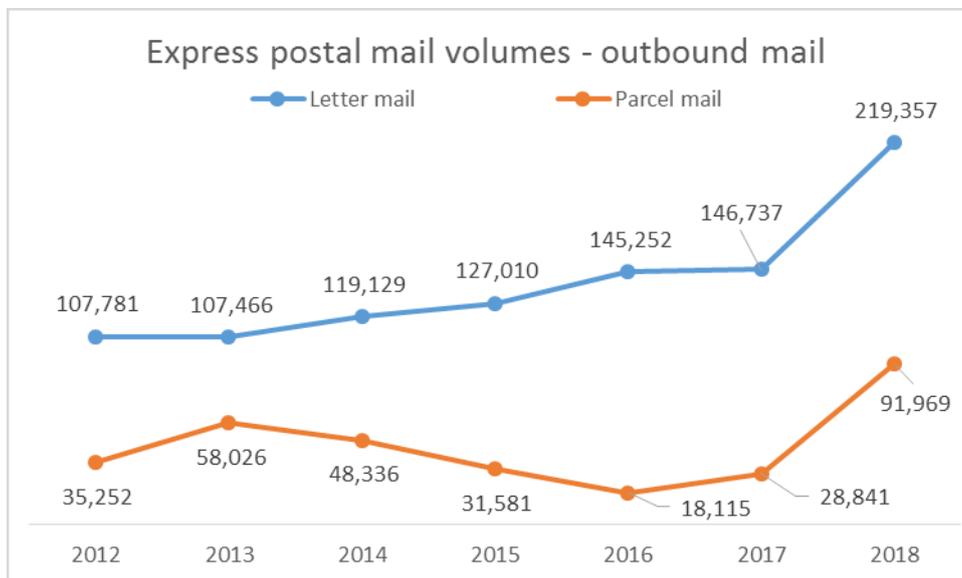


Chart 5: Express mail volumes - outbound

With respect to the outbound express mail segment, MaltaPost accounted for only 1.0% of all letter mail items delivered in 2018 and for 3.2% of all parcel mail items. Again, this goes to show that alternative postal providers in the outbound express mail segment account for the lion's share of all postal mail volumes.

From a revenue standpoint, the express mail market category (domestic and outbound) has seen an overall increase in annual revenues from €4.0 million in 2012 to €6.4 million in 2018.

Express mail activity is likely to strengthen in the coming years, boosted mainly by the anticipated volume growth in terms of parcel and packet volumes. Effectively, such growth would provide opportunities for established and new authorized undertakings in the provision of express mail services. Stronger competition could also result in cheaper express postal rates, which would in turn pose a stronger constraint on the pricing behavior of MaltaPost in the provision of standard parcel mail markets (namely Market 7 and Market 8 identified in Chapter 1 of this market review). The extent to which postal rates for express parcel mail constrain (or could constrain) postal rates for standard parcel mail will be addressed in the section 3.3.3 below.

### 3.3 Barriers to entry and potential competition

The purpose of this section is to determine the factors that would inhibit the realisation of new entry in the postal markets in Malta. The extent of barriers to market entry would typically be determined by the fixed costs involved in setting up a new postal network, considering that such fixed costs cannot be recuperated upon market exit, the extent of vertical and horizontal integration, the relevance of economies of scale and scope, and the level of market maturity.

Where barriers to entry are high, the threat of potential competition is likely to be weak or absent. This is because barriers to entry serve as obstacles to new competition, thus affording power to the incumbent operator(s) to behave to an appreciable extent independently of competitors and customers. Ultimately, high barriers to entry increase the ability of incumbent(s) to retain market control and to charge prices that do not equate to equilibrium prices under a competitive scenario, at the burden of consumers.

Also of relevance at this stage are various considerations on the structural set-up of the postal markets in Malta, as follows:

- (i) Specifically with reference to the national territory, Malta is small in size and therefore the setting up of a postal network is not theoretically prohibitive. Take the following example: suppose a client wants to deliver a letter mail or parcel mail item to someone living on the opposite side of the island. At its longest point, the island spans about 27 kilometres, and the shortest route between Birżebbuġa (on the South East coast) and the furthest point away (Ċirkewwa) is a 35 kilometre stretch of road; a journey that in non-peak hours should not take longer than 50 minutes. Of course, the limited size of the Maltese land territory makes it even possible for end-users, including local businesses, to deliver domestic letter mail and parcel mail items personally to the desired addressee and thus to forgo the traditional postal service altogether. Of significance in this respect is that several businesses in Malta offer their own distribution and delivery services, and this trend is likely to persist and to strengthen in the future with the anticipated growth of eCommerce.
- (ii) The incumbent operator, MaltaPost, has served Maltese end-users for many years, as a nationwide service provider. Therefore, the incumbent operator would have, over time, acquired the necessary knowledge and expertise to improve on existing processes and to develop a network that would be difficult to replicate in the short to medium term.

Reputation and branding remain important for the postal markets as well, and while the MCA perception surveys may suggest that MaltaPost is viewed more negatively than before, this operator still enjoys the privilege of being a well-known and recognized Maltese brand synonymous with nationwide provision of postal services. Thus for new entrants to be able to compete in the standard mail postal markets with the established incumbent, they would need to intensify their market presence by replicating MaltaPost's corporate goodwill. This in reality is likely to prove very difficult for new entrants to achieve.

- (iii) Given Maltapost's vast network and capacity to collect, sort, transport and distribute postal articles with nationwide access, the MCA considers MaltaPost to be a vertically integrated operator. MaltaPost is also operating in several postal activities that are at the same level of the supply chain. Horizontal integration offers several advantages to MaltaPost, including favourable economies of scale, economies of scope and increased market power, as well as the ability to cross-subsidize production across markets.

### 3.3.1 Single piece letter mail markets – Market1 and Market 2

The provision of single piece letter mail services involves a process of collection, sorting and delivery which is quite complex to organise. The costs involved are largely fixed in nature and relate to building a network that would provide for a number of nationwide access points (post boxes), post offices, sorting hubs, transportation facilities and a considerable number of post employees for the delivery of postal items to the intended addressee. Therefore, if a new entrant wishes to also provide outbound single piece letter mail services, then the operator would also have to extend its network internationally by negotiating bilateral/multilateral agreements with foreign postal operators.

Such an investment would have to be carried out in the knowledge that the single piece letter mail markets are characterised by declining mail volumes. In fact, market volume trends show that some of the letter mail markets have at best registered stagnant or moderate demand-side growth, which is a strong indication of mature markets. Significantly, the size of single-piece letter mail market has contracted over a number of years, notwithstanding the important role that 'traditional' single piece letter mail services have in various instances (such as for billing correspondence from utility companies and other service providers; the issuance of new credit cards and their corresponding personal identification numbers; tax-related and financial-related documentation; and in cases of people not having access to the Internet or lacking the basic computer literacy use).

Also, MaltaPost is both vertically and horizontally integrated, in that it is a fully fledged postal operator present across the whole spectrum of postal markets. Furthermore, MaltaPost's long standing position as the only postal operator providing single piece letter mail services results in it enjoying a large base of postal service users and likewise benefits from economies of scale. The fact that the costs involved in the provision of single piece letter mail services are mostly fixed, MaltaPost is in the ideal position of spreading costs across a large base of end users and thus to achieve lower average costs in providing the service due to cross-subsidization over a greater range of services. Hence, the MCA is of the opinion that the single piece letter mail markets are subject to high barriers to entry.



Given MaltaPost's high market share alongside the existence of significant barriers to entry, the MCA also considers that competition from alternative postal operators to MaltaPost in the standard letter mail markets is not likely to materialize within the timeframe of this review.

### 3.3.2 Bulk mail and registered letter mail markets – Markets 3 to 6

It may be argued that the bulk mail and registered mail markets present lower barriers to entry, in part because the relevant collection, sorting, and distribution processes are less complex and can be localized to one central location (used for collection and sorting), whilst ideal for flexible labour agreements (often on a commission basis), to such an extent as to soften the labour cost element. Notwithstanding that these markets require far less fixed cost and capital expenditure than the single letter mail markets, the MCA believes that new entrants would only be able to successfully compete and survive by achieving scale in their postal delivery service. For example, the MCA considers that Premiere Post's entry into the domestic bulk letter mail market would not have been made possible if it had not managed to shift away from MaltaPost the one client on which all of Premiere Post's business depends (this client alone accounts for some 37 percent of the total domestic registered letter mail volumes recorded in 2018).

Given the circumstances, the MCA considers that the possibility of new entrants roping in a large customer to their postal service in the bulk mail and registered mail markets is very difficult, especially given MaltaPost's brand name and corporate goodwill. This means that it would be very difficult for new entrants to gain significant market share in a short period of time and thus to benefit from economies of scale and scope in these markets. Consequently new entrants will have to compete with MaltaPost for the individual household and business registered letter mail users. Also, MaltaPost's brand name and corporate goodwill is also very strong in the bulk mail markets. Again such a scenario would pose a challenge for new entrants since MaltaPost, having been active in the relevant markets for quite a number of years, has managed to establish itself, among both residential and business customers, as the leading nationwide provider of registered letter mail services. In this regard, MaltaPost enjoys first mover advantage in the provision of registered and bulk letter mail services and consequently may easily capitalize on this advantage by building a large market presence and strong customer base. This makes it a de facto monopolist in all the relevant markets.

With this outlook the MCA thus concludes that conditions in the registered letter mail markets and the bulk mail markets will continue to confer competitive advantages in favour of the incumbent in a way that supports the SMP position it holds in the relevant markets. Given MaltaPost's high market share in relevant markets alongside the existence of significant barriers to entry, the MCA considers that competition from alternative postal operators to MaltaPost in the markets for bulk letter mail and registered letter mail is not likely to materialize within the timeframe of this review. Where competing operators do already exist, specifically with the presence of Premiere Post in the domestic registered mail market (Market 3), the MCA does not anticipate further change in MaltaPost's market share.

### 3.3.3 Parcel mail markets – Market 7 and Market 8

The provision of parcel mail services involves a process of collection, sorting and delivery which is deemed to be less complex to organise and set up than is the case for letter mail services. The costs involved for parcel mail activity are significantly lower compared to those involved for activities related to standard domestic mail. For instance, postal operators wanting to start offering domestic parcel mail services do not need to have a nationwide infrastructure of post boxes for the collection of parcels. Parcels are typically tendered over the counter and therefore new postal operators would only need to have a central post office and/or a number of sub-post agents to collect parcel mail items. The central post office may likewise be used as a sorting hub. Generally speaking, the same process would be involved in the case of outbound parcel mail. The following sections will focus on the domestic parcel mail and outgoing parcel mail segments respectively.

#### (a) Domestic Parcel Mail

The dedicated transport that is required for the delivery of a domestic parcel mail item to the addressee would be relatively straightforward to organise, given Malta's geographic size. Moreover, if the domestic parcel could be retrieved over the counter, should household delivery not be finalised directly at the premises of the addressee. To this effect, the workforce complement that is required to deliver domestic parcels is also significantly lower than the workforce involved in the delivery of letter mail services.

Developments in recent years for domestic parcel mail support this reasoning, particularly when considering the strengthening presence of alternative operators to MaltaPost in the express mail segment. For example, in 2018, express mail courier providers accounted for 77.7% of domestic express parcel mail volumes. Meanwhile, only MaltaPost is active in the standard domestic and the standard outbound parcel mail markets. The absence of alternative postal service providers to MaltaPost in the standard domestic parcel market is not likely to be a result of high barriers to entry in this segment (considering for example that the same dedicated transport and personnel can be utilised for the delivery of both express and standard mail services) but rather a result of consumer demand shifting for express mail services related to eCommerce transactions.

The MCA observes that, over the years, courier operators have in fact started offering expedited or express domestic parcel mail services that is on-par with the Universal Service and in various instances at more competitive prices, as shown in Table 1 below. Indeed, Table 1 shows that there are various instances where the price of an express domestic parcel mail service is cheaper than the regulated price of a standard domestic parcel mail service applied by MaltaPost. This notwithstanding that customers using the express mail service do so on the basis of the value added qualities these services offer, such as speed and guaranteed time delivery when considering that the express mail option includes expedited delivery.

This goes to suggest that the express operators in the delivery of domestic parcel mail items are in a position to constrain MaltaPost's pricing behaviour even absent regulation, should this operator decide to raise the relevant postal rates in a deregulated environment. Given also the rate with which the

express domestic parcel mail segment is growing, potential competition may materialise within the timeframe of this review with the arrival of new market players.

Domestic Parcel Mail – Postal rates		MaltaPost		Arrow Express	Gozo Express	Miles Express ****	DHL Malta	Air Cargo Logistics
		USP	Express					
Features	Guarantee	D + 1	D	D+1*	D	D	D	D
	Tracking	Yes	Yes	Yes	Yes**	Yes	Yes	Yes
	OTC	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pricing (by weight)	1 kg to 4 kg	€9	€10	€6	€10	€4	---	€10
	5kg	€9	€10	€6	€10***	€4	€14.28	€10
	10kg	€9	€10	€6	€10	€4	€30.15	€25
	15kg	€9	€11	€9.50	€10	€4	€46.02	€25
	20kg	€9	€12	€9.50	€10	€4	€61.00	€25

<b>Notes:</b>	* Arrow Express offers delivery on the same day (as opposed to D+1) for an additional €7 surcharge.
	** Gozo Express uses a Proof of Delivery system and emails the client when the receiving party counter-signs.
	*** Gozo Express charges €10 for a 30 cm x 30 cm x 30 cm parcel or smaller, and its pricing structure is both weight and size dependent. For the sake of simplicity, we assume the €10 rate homogeneously for the 4 chosen weight classes.
	**** Miles Express charges a rate of €8.50 in case of Malta to Gozo delivery.

Table 2: Domestic parcel mail prices – express and standard

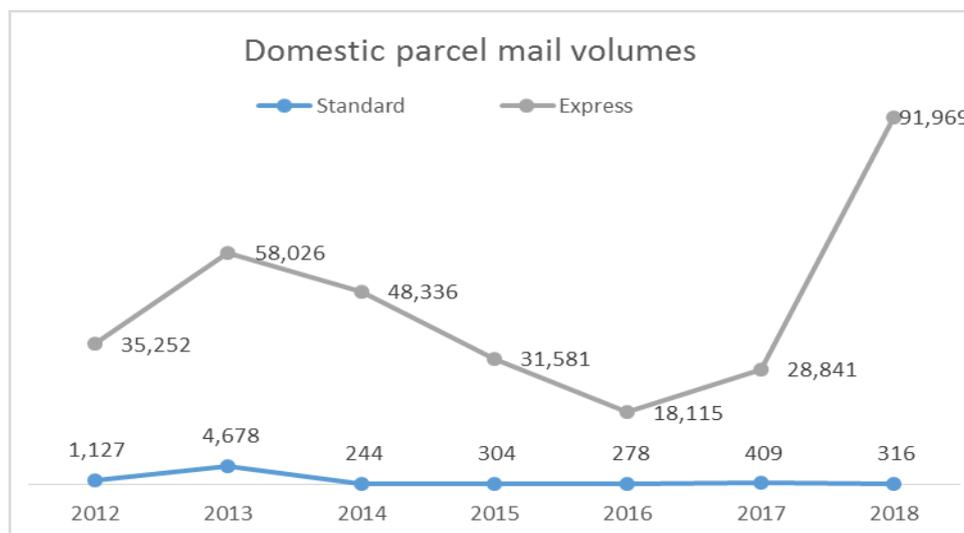


Chart 6: Parcel mail volumes - domestic

Overall, courier operators are deemed well-positioned to compete with MaltaPost in the provision of a domestic parcel mail service. Chart 6 shows that MaltaPost's domestic parcel mail volumes have steadily gone down since 2012, whilst express domestic parcel mail volumes have gone up significantly in the period 2015 to 2018. With the number of domestic parcel mail volumes on the increase, the MCA notes that courier operators are managing to achieve scale at the expense of MaltaPost. Growing domestic parcel mail volumes have indeed attracted new operators in the express segment. In the MCA's view this situation is likely to prevail under current trends and market realities.

#### (b) Outbound Parcel Mail

The provision of a parcel mail service involves a process of collection, sorting and delivery which is less complex to organise and set up than is the case for a letter mail service. This is because the costs involved with the former are significantly lower compared to the provision costs of the latter. For instance, postal operators wanting to start offering an outbound parcel mail service do not need to have a nationwide infrastructure of post boxes for the collection of parcels. Outbound parcels are tendered over the counter and therefore a central post office and/or a number of sub-post agents on a commission paid basis would suffice to meet consumer demand. The central post office may likewise be used as a sorting hub to organise the parcels by destination. In this regard, the workforce complement required for collection and sorting would not be substantial. Moreover, the delivery phase in the provision of outbound parcel post services totally depends on the foreign postal operator with which the local postal operator reaches an agreement to deliver postal articles beyond Malta. To this effect, the local postal operator does not need to have in place a local delivery system, thus avoiding local transport costs and delivery related wages.

In view of this assessment, the MCA therefore considers that it is not prohibitive for a new entrant to develop its own local postal network for the collection and sorting of outbound parcel mail items. At the same time, however, local postal operators wanting to offer outbound parcel post services must negotiate agreements with foreign postal operators to deliver postal items beyond Malta. Without such commercial agreements new entrants will be unable to launch their outbound standard parcel service and compete with the MaltaPost.

Cross-border agreements with any foreign postal operator would necessitate a certain scale, which may prove to be difficult for smaller and new entrants to build scale and match the same capacity as MaltaPost. This notwithstanding, newer market entrants are managing to capture a significant share of market volumes, but specifically in the express mail segment. Indeed, courier-based market players accounted for 96.8% of all express outbound parcel mail volumes recorded in 2018, despite MaltaPost being active in this segment.

Of significance is that, currently, the postal rates charged by courier operators for express outbound parcel mail remain significantly higher than the regulated price for standard outbound parcel mail (see Table 3 below).

Outbound parcel mail prices	MaltaPost		Miles Express	Tubeline
	USP	Expedited		
<b>Weight - 1kg</b>				
UK	€ 15.25	€ 37.27	€ 38.74	€ 25.40
Other EU	€ 15.25	€ 37.27	€ 42.96	€ 32.25
US	€ 20.11	€ 65.23	€ 43.48	€ 42.90
<b>Weight - 5kg</b>				
UK	€ 37.84	€ 74.55	€ 72.95	€ 65.26
Other EU	€ 30.00	€ 74.55	€ 88.73	€ 83.46
US	€ 49.06	€ 158.43	€ 89.78	€ 110.93
<b>Weight - 10kg</b>				
UK	€ 56.34	€ 109.45	€ 103.27	€ 111.96
Other EU	€ 45.00	€ 109.45	€ 127.58	€ 135.69
US	€ 92.76	€ 239.93	€ 131.52	€ 157.12

Table 3: Postage rates for outbound parcel mail – express vs standard

However, notwithstanding the different postage rates that apply for standard and express outbound parcel mail, and the fact that express rates are more expensive, Chart 7 below shows that the express segment is growing at a faster pace than is the case for the standard segment.

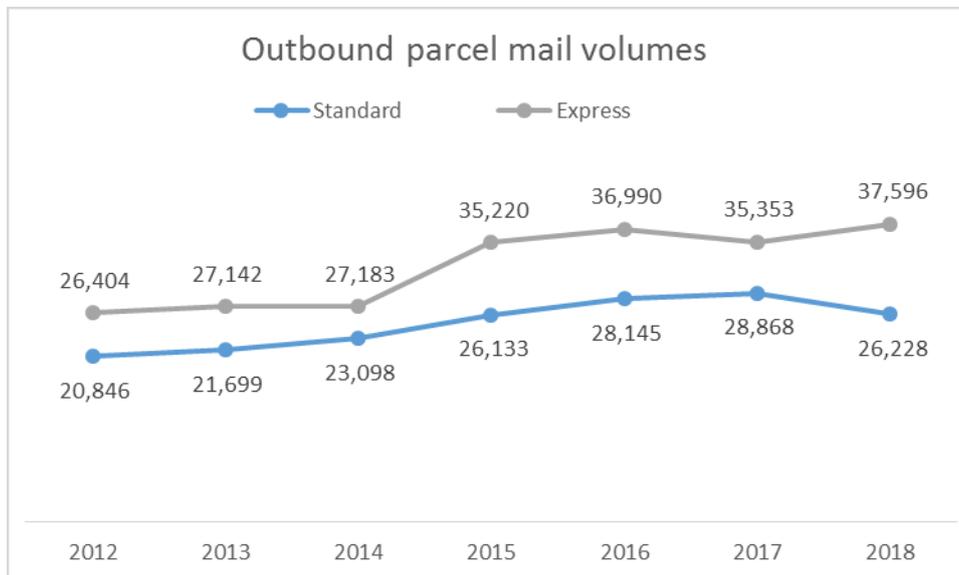


Chart 7: Parcel mail volumes - outbound

Whilst this is indicative of future demand patterns, the current scenario still underlines two distinct outcomes when it comes to the provision of standard outbound parcel mail and express outbound parcel mail. With respect to the former, the MCA considers that the size of the market is not conducive

to new market entrants, given also the strong presence of MaltaPost. It has yet to be seen whether competition in the express segment will bring about cheaper prices to such an extent as to pose as a strong indirect constraint on MaltaPost in the standard segment. Such an outcome is unlikely to materialize within the timeframe of this review.

### 3.4 Countervailing Buyer Power

An assessment of countervailing buyer power would look at the possibility of the consumers exerting pressure on the pricing behavior of local postal operators. Consumers may also have sufficient power, such as in the case of big business clients, to put pressure on the operators to offer a better service. In fact, consumers with a strong negotiating position may significantly shape the level of competition in a market as this will tend to restrict the operator's ability to exercise market power and to act independently in its service quality and pricing behavior. The extent of countervailing buyer power will however depend on whether consumers could, at the outset, choose to discontinue the service being provided by a particular operator and switch to alternative providers, within a short period of time.

The MCA notes that there are no major changes in countervailing buyer power in the letter mail markets. This is because users of such services only have MaltaPost to choose from and cannot therefore switch to alternative postal operators for the outbound standard parcel post services. Even where another postal operator is competing with MaltaPost in the domestic registered mail market, the presence of Premiere Post is mainly addressing the needs of a large business client, without offering registered mail services to the general public on a small scale.

Meanwhile, notwithstanding the fact that an element of electronic substitution has happened and will continue to happen in the future, the majority of households and small businesses today still use the traditional letter mail services. For instance, when billing correspondence from utility companies and other service providers are issued, these letters often contain a self-addressed envelope that allows the receiver to remit payment back to the company by way of traditional mail. Similarly, paperwork for the confirmation of large financial transactions, contracts, new credit cards and their corresponding personal identification numbers, as well as many tax return documents are commonly sent through the mail. On the social level, traditional mail services are also important when someone wishes to be deliberate and thoughtful about his or her communication, such as a letter of sympathy to a bereaved person, a postcard or a greetings card. Ultimately, traditional letter mail services continue to serve those who either do not have access to the Internet or lack the basic computer literacy to use non-postal alternatives for communication.

The situation is somewhat evolving with respect to the parcel mail markets. The MCA notes that if someone in Malta wanted to send a parcel to an address outside in Malta the sender may decide to do so via one of the many express postal service providers available. Consequently, countervailing buyer power in the domestic parcel mail market must also be assessed within the context of consumers having a choice between MaltaPost and alternative postal operators. When the MCA considers the features offered by the express mail providers for domestic parcel mail, it becomes obvious that,

despite their theoretical distinction, the domestic standard and express parcel markets are in practice offering products that are similar enough for consumers to be willing and able to substitute to and from. Given the size of the island, consumers also have options of self-service or using alternative delivery methods as offered by many retailers domestically.

Meanwhile, the MCA notes that more people are opting to use the express outbound parcel mail services on the basis of the value added qualities these services offer. However, postal rates in this express segment are still significantly higher than the regulated rates applicable for the standard outbound parcel mail. The MCA therefore concludes that end-users using alternative postal providers to deliver an express outbound parcel mail item have exclusively done so on the basis of the value added qualities these services offer. This means that there is no sufficient countervailing buyer power to constrain MaltaPost's pricing behavior in an unregulated market for the delivery of standard outbound parcel mail.

### 3.5 Preliminary conclusion on the assessment of SMP

In conclusion to this market analysis, the MCA considers that MaltaPost continues to enjoy significant market power (SMP) in the following markets:

- Market 1: Domestic Single Piece Letter Mail Market;
- Market 2: Outbound Single Piece Letter Mail Market;
- Market 3: Domestic Registered Letter Mail Market;
- Market 4: Outbound Registered Letter Mail Market;
- Market 5: Domestic Bulk Letter Mail Market;
- Market 6: Outbound Bulk Letter Mail Market; and
- Market 8: Outbound Parcel Post Market.

MaltaPost enjoys 100% share in all these standard mail markets but for the standard domestic registered mail market, the latter of which it shares a small minority of with Premiere Post. As shown further in section 3.4, barriers to entry remain high enough in the Markets 1 to 6 and Market 8, such that the MCA does not consider new market entry to be viable or realistic in the timeframe falling under the purview of this analysis. Section 3.4 further shows that consumers have little to no ability, absent regulation, to influence MaltaPost's pricing behaviour in these markets given that no equivalent alternative postal provider exists. This holds true even in the domestic registered mail market, since Premiere Post only provides postal services to LESA via a commercial agreement.

The MCA however concludes that MaltaPost's activity does not satisfy the criteria required for SMP status in the domestic parcel mail market (i.e. Market 7). When discussing market developments, the MCA has shown that express mail providers (including MaltaPost's own express parcel service) offer domestic prices that are extremely competitive, and sometimes cheaper, than the regulated price implemented by MaltaPost for its standard domestic parcel mail service. Given the developments in express parcel delivery segment, the MCA considers that consumers could successfully constrain MaltaPost's pricing behaviour in a deregulated Market 7.

## 4 Regulatory Obligations

The Postal Services Regulations states, in Regulation 64C [SL254.01 of the Laws of Malta]:

*“where the Authority determines that a postal services market is not effectively competitive, it shall designate postal operators as having significant market power in accordance with regulation 64B, and it shall impose on such postal operators appropriate regulatory obligations, or maintain and amend such obligations where they already exist”.*

And alternatively:

*“where the Authority determines that a postal services market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations applicable to a postal operator with significant market power, provided that in cases where a postal operator had previously been designated as having significant market power and such obligations already exist, the Authority shall, after giving reasonable notice to any parties which the Authority considers to be affected by such withdrawal, withdraw such obligations onerous on the postal operator concerned”*

### 4.1 Current ex ante regulatory obligations

In October 2013, the MCA published a decision whereby it determined a position of dominance held by MaltaPost in all of the letter mail markets identified in the relevant document entitled ‘Market Review for the Postal Sector: Letter Mail Markets Identification and Analysis of Markets, Determination of Market Power and Setting of Remedies’<sup>25</sup>. By way of this decision the MCA imposed on MaltaPost the following remedies:

- Obligation to set prices via a mechanism established by the MCA;
- Obligation of non-discrimination;
- Obligation of provision of services on an unbundled basis;
- Approval and publication of tariffs;
- Accounting separation.

On the 17<sup>th</sup> of March 2014, the MCA issued another decision whereby it identified a position of dominance held by MaltaPost in all of the parcel post markets that were defined in the relevant review<sup>26</sup>. To this effect, the MCA imposed a suite of remedies on MaltaPost, similar to what has been imposed on the same postal operator in the letter mail markets.

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<sup>25</sup> Link to MCA Decision concerning letter mail markets:

[https://www.mca.org.mt/sites/default/files/decisions/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets\\_%20Final%20Decision.pdf](https://www.mca.org.mt/sites/default/files/decisions/131030%20Postal%20Market%20Review%20-%20Letter%20Mail%20Markets_%20Final%20Decision.pdf)

<sup>26</sup> Link to MCA Decision concerning parcel mail markets: <https://www.mca.org.mt/sites/default/files/decisions/postal-market-review-parcel-post-markets-final-decision.pdf>

## 4.2 Proposed decision on the approach to future regulatory intervention

The MCA has determined in the current review that MaltaPost holds a position of dominance (or SMP) in all the letter mail markets (Markets 1 to 6) and the outbound parcel mail market (Market 8) identified in this review. Therefore, if left unregulated in these postal markets, MaltaPost would have the power to constrain potential competition from emerging and thus to behave to an appreciable extent independently of users and potential competitors. To this effect, the MCA is to maintain the current ex ante regulatory obligations in these markets. These obligations are described in more detail in sub sections 4.3.1 to 4.3.5 below.

The MCA however considers that MaltaPost no longer holds SMP in the market for domestic parcel mail. The MCA therefore considers it reasonable and appropriate to withdraw all ex ante regulatory obligations currently in force on MaltaPost in Market 7. The proposed regulatory approach for Market 7 is outlined in Section 4.4.

## 4.3 Proposed ex ante regulatory remedies in Markets 1 to 6 and Market 8

This section provides a description of the ex ante regulatory obligations that are to be maintained on MaltaPost in all the letter mail markets (Markets 1 to 6) and the outbound parcel mail market (Market 8).

### 4.3.1 Obligation to set prices on the basis of an established mechanism

By restricting the upper-limit of pricing, the SMP operator would not charge monopolistic prices at the burden of consumers. Effectively, the SMP would not be in a position to charge predatory, low pricing and unfairly squeezing margins.

In accordance with regulation 64E of the Postal Services Regulations, MaltaPost is to provide postal services in the postal markets where it holds SMP to consumers at cost-oriented prices, such that these prices reflect and take account of the costs of providing the service.

### 4.3.2 Obligation of non-discrimination

The non-discrimination obligation requires MaltaPost to implement prices, terms and conditions for any of its services based on objective differences in the service itself, specifically on the basis of variations in the costs of providing the service, variations in the quality or quantity of a service provided, and / or variations in the duration of the service agreement period.

In accordance with regulation 64F of the Postal Services Regulations, MaltaPost is required to provide postal services in the relevant postal markets where it holds SMP to customers at prices, terms and conditions that are non-discriminatory. MaltaPost is not to implement price discrimination in ways that favour itself or any of its subsidiaries or partners in the provision of such services. It may also not discriminate against particular customers (especially on the basis of immutable characteristics) unless specified otherwise.



#### 4.3.3 Obligation of provision of services on an unbundled basis

There is a risk that a dominant operator in any postal market can, absent regulation, bundle products or services within that market with ones offered elsewhere so as to foreclose the market to consumers or to stifle potential entry, since competitors may be unable to offer a competing bundle.

In accordance with regulation 64G of the Postal Services Regulations, MaltaPost is therefore required to provide postal services in the markets where it is designated with SMP on an unbundled basis. Put otherwise, for any bundle containing a postal service in which there exists SMP, the relevant postal service has to be offered separately from the bundle.

MaltaPost must therefore refrain from requiring that, as a condition for purchasing a particular parcel post service, a customer also purchases any other postal service or non-postal service. It would however be possible for MaltaPost to offer customers the option of purchasing a package that contains multiple postal services and non-postal services or products.

#### 4.3.4 Approval and publication of tariffs

The SMP must be transparent, via disclosure on MaltaPost's website, with regards to the effective tariff charges for its postal services. MaltaPost must do so not later than the date at which such charges are levied on a postal service, after approval by the MCA. The information provided must be transparent with regards to the nature of the service (description), the price, the quality and availability, and eligibility requirements if these are approved. The information must also be current, readily available and easily accessible, and understandable.

The MCA may review these tariffs at any time to determine whether the prices, terms and conditions are cost-oriented and non-discriminatory, and require the SMP to amend its public disclosure accordingly.

In accordance with regulation 64H of the Postal Services Regulations, and in accordance with any decision issued by the MCA, MaltaPost is thus required to submit a tariff for the written approval of the MCA prior to offering or modifying the terms and conditions on which it offers any postal service that it provides in the above markets. In addition, MaltaPost is required to obtain the written approval of the MCA prior to the withdrawal of a postal service that it provides in the above markets.

#### 4.3.5 Accounting separation

In accordance with regulation 64I of the Postal Services Regulations and without prejudice to article 23 of the Postal Services Act, MaltaPost is required to keep separate accounts within its accounting system in line with any directives that the MCA may issue.

Effectively, in accordance with article 23 of the Postal Services Act, MaltaPost, as the designated USP, is required to keep separate accounts within its accounting system for each of the postal services which are part of the universal services on the one hand and those which are not on the other. MaltaPost is

required to continue to maintain the level of accounting separation as identified under the MCA's decision on Accounting Separation until such time as any adjustments are required.

#### 4.4 Proposed withdrawal of ex ante regulatory remedies from Market 7

The MCA considers that MaltaPost no longer holds SMP in the market for domestic parcel mail, given the strong indirect competitive constraints that would be posed by courier-based postal operators on the pricing behaviour of MaltaPost in a deregulated environment. The MCA therefore considers it reasonable and appropriate to withdraw all ex ante regulatory obligations currently in force on MaltaPost in Market 7.

This withdrawal shall however be implemented without prejudice to any other general obligations at law and / or remedies emanating from any other MCA decision, including:

- the obligations on MaltaPost as the Universal Service Provider (USP), with the criteria on which the universal postal service being set in the Postal Services Act;
- the rights of the consumer with respect to access to services;
- the guarantee of daily delivery; and
- the publication of information of what is on offer by MaltaPost, such as about the universal postal services that are provided, and the prices and conditions pertaining to them.

In order to have a smooth transition from a regulated to a non-regulated market environment, the MCA shall withdraw the relevant existing obligations at the expiry of 90 calendar days following the publication of the relevant decision. Current obligations would continue to be in effect during these 90 calendar days. Following withdrawal of ex ante regulatory obligations the MCA will keep monitoring market developments and intervene again if deemed necessary.

#### 4.5 Statutory Power Unaffected

Nothing in this document shall limit the MCA in the exercise and performance of its statutory functions, powers and duties under legislation (in force prior to or after the effective date of this document becoming a decision) from time to time as the occasion may require. The proposed regulatory intervention, as outlined in Sections 4.3 and 4.4, is without prejudice to the power of the MCA to issue any directives to MaltaPost as it may be authorised to issue at law, including but not limited to any such directives issued in respect of article 76A of the Postal Services Act, Chapter 254<sup>27</sup>. Any decisions issued by the MCA prior to the effective date of this consultation document becoming a decision shall continue to be in force until revoked or amended by the MCA.

#### 4.6 Monitoring Developments

The MCA considers that it is very important to keep a close watch on all the parcel post markets identified for any signs of progress and developments. To this end, the MCA intends to monitor market

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<sup>27</sup> This is without prejudice to the generality of sub article (1) of Article 76A, regarding the Authority's issuance of directives regarding the provision of the universal service.



trends and developments on an ongoing basis, and remains committed to carry out new analysis on any one of the parcel post markets identified and at any point in time in response to any significant development in that market.



## 5 Submission of Responses to the Consultation

The MCA welcomes written comments and representations to this report during the national consultation period, which shall run from the 30th of September 2019 to the 11th of November 2019.

The MCA appreciates that respondents may provide confidential information in their comments. This information is to be included in a separate annex to their response and should be clearly marked as being confidential. After due consideration of the comments and representations received, the MCA will review this analysis and publish a report summarizing the responses to the consultation.

For the sake of openness and transparency the MCA will publish the names of all respondents to this consultation. To this end, all representations may be published, except where respondents indicate that a response, or part of it, is confidential. The MCA will take steps to protect the confidentiality of all such material from the moment that it is received at the offices of the MCA. Respondents should however avoid applying confidential markings wherever possible.

All responses must be submitted to the MCA by no later than close of business of the 11/11/2019.

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

All submissions should be made in writing and sent by email to [patrick.b.vella@mca.org.mt](mailto:patrick.b.vella@mca.org.mt).

If required, hard copies may also be posted or faxed to the address below.

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