



Review of Universal Service Obligations on Electronic Communication Services

Response to Consultation and Decision

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EXECUTIVE SUMMARY

In accordance with current local legislation, the Malta Communications Authority (hereinafter “MCA”) is required to ensure that a number of identified electronic communication services of specified quality are made available to all end-users in the Maltese islands, independently of geographic location, and, in the light of specific national conditions, at affordable prices. A new legal framework established by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (hereinafter referred to as ‘EECC’) ¹ also includes provisions relating to the Universal Service Obligations (hereinafter referred to as ‘USOs’). Although the EECC has yet to be transposed into national law, the provisions of the universal service obligations under current national law are very much in line with the EECC. Accordingly, the MCA decided as an interim measure, to update the USOs which were last revised in 2015, also taking into consideration, where practicable/possible, the new provisions set in the above mentioned EECC.

To this effect, a consultation document was published by the MCA on the 28th August 2020 and the consultation period ran until the 8th October 2020. The scope of the public consultation and proposed decision was to analyse and identify which services should be considered as universal services, and to consider whether any of the universal services identified in the USO Decision of 2015 should be updated and/or waived. Universal services would include those services with specialised tariff options to ensure that all users, including consumers with low income or with special social needs, can control expenditure and afford the universal services in question.

The MCA received feedback from various entities namely GO plc (hereinafter referred to as GO), Melita Limited (hereinafter referred to as Melita), the Ministry of the Family, Children’s Rights and Social Solidarity (hereinafter referred to as MFCS), the Foundation for Social Welfare Services (hereinafter referred to as FSWS) and the Ministry for the Home Affairs, National Security and Law Enforcement (hereinafter referred to as MHSE). Their feedback together with MCA’s reactions are integrated in this decision.

Since this update is intended as an interim measure before the EECC is transposed, new obligations are set to come into force when new designations are carried out. The undertaking or undertakings responsible for the provision of all or part of the universal services may request a claim for funding in relation to any unfair burden it claims to have suffered as a result of providing each respective Universal Service Obligation. The MCA would subsequently evaluate the information submitted by the undertaking in order to determine whether an unfair burden really exists.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

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1. INTRODUCTION

Universal Services are defined as a minimum set of services of specified quality which are to be made available to all end-users in the Maltese islands, regardless of their geographical location, and, in the light of specific national conditions, at affordable prices.² The objective of universal services is to promote social inclusion of electronic communications services, and to place on designated undertakings obligations to provide a minimum set of services to all end-users, including vulnerable groups. Vulnerable groups include persons on low income, residents of rural or high installation cost areas, and persons with disabilities.

Prior to the publication of this Decision Notice, the universal service regime was based on a decision published by the MCA in May 2015 entitled ***'Universal Service Obligations on Electronic Communication Services Decision and Response to Consultation'***. In that decision, GO was, in default of any expression of interest, and in the case where applicants failed to satisfy set criteria, designated as the organisation responsible to provide the following Universal Services: Provision of Access at a Fixed Location; Comprehensive Electronic Directory; Public Pay Telephones; Special Measures for Disabled Users; Provision of Reduced Tariff Options for Users; and Ensuring Users can Control Expenditure.

The MCA, as the entity responsible for the regulation of the Maltese electronic communications sector in accordance with national and EU legislation, is required to decide at reasonable intervals, following a detailed analysis and assessment, whether an electronic communications service should be considered as a universal service, and whether a current universal service should be updated or revoked. The MCA is of the opinion that the USO Decision published in 2015 warranted an interim update to reflect the market realities and changing needs of consumers. A further redefinition of the universal services is still anticipated at a later stage after the EECC is transposed into national law.

The MCA is required to adopt an efficient and appropriate approach for the purpose of ensuring that universal services are being implemented and social requirements fulfilled. The Authority is required to decide which undertaking or undertakings should be designated with the responsibility for the provision of one or more of the constituent elements of the universal services.

In August 2020, the MCA published a consultation paper to examine the scope of the universal service, in particular in relation to the obligation/s to be met by the designated undertaking. It also considered the coming into force of changes to all or part of each of the universal services. Finally, the consultation also delineated the cost and funding methodology applicable for a claim for funding to be submitted by an undertaking in respect of the provision of the universal services.

Feedback to this consultation and proposed decision was received from five interested parties namely GO, Melita, MFCS, FSWS and MHSE. The MCA acknowledged all respondents for their contributions and is including a summary of the feedback received in each of the respective sections of this Decision Notice.

² Electronic Communications (Regulation) Act, Cap. 399, Article 21

2. BACKGROUND

2.1 Universal Service and Designations

On the basis of the MCA USO Decision published in May 2015, the following services were established as Universal Services:

- Provision of Access at a Fixed Location;
 - Connection to the public telephone network and access to publicly available telephone services;
 - Connection to Functional Internet Access.
- Electronic Comprehensive Directory;
- Public Pay Telephones;
- Provision of Specific Measures for Disabled Users;
- Provision of Reduced Tariff Options;
- Ensuring Users can Control Expenditure.

GO plc was required to provide all the above services as the designated undertaking.

2.2 New Designations

As stated in the introduction, the current regulatory framework allows the MCA to designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.³ Although service providers are encouraged to provide the basic universal services to all consumers (as also foreseen in the EECC), the Authority may still impose obligations for the provision of certain services on one or more designated undertakings in order to ensure the continued availability of the universal services to all end-users.

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

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

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

⁴ Ibid. regulation 22(4)

⁵ Ibid. regulation 30

3. LEGAL BASIS

The fundamental aspects of the universal service regulation are currently outlined in the Universal Service Directive⁶ (the "Directive"), the Electronic Communications (Regulation) Act, Cap.399 (the "Act") and the Electronic Communications Networks and Services (General) Regulations, SL 399.28 (the "Regulations"). As specified earlier in this document, the national legislation shall be updated in the near future to reflect the new provisions set in the EECC.

Article 4(3) of the Malta Communications Authority Act (the "MCA Act") establishes that the Authority is entitled to enforce, regulate, monitor, and keep under review all practices, operations and activities being regulated and carry out any research or investigation of any matters regulated by or under the MCA Act. The MCA Act establishes that it shall promote the interest and rights of all end-users including the disabled, the elderly and those with special social needs.⁷

Part V of the Regulations entitled "Universal Service Obligations" highlights the importance of the provision of the universal services at specified quality and at affordable rates to all end-users, amongst other conditions outlined under each universal service. These include *inter alia* the provision of access at a fixed location and provision of telephone services, directory enquiry services and directories, public pay telephones and other comparable services and measures for disabled end-users. Regulations 21 to 32 of the Regulations give the Authority the power and obligation to review the USOs, to designate the universal service provider (the "USP") and to establish a funding mechanism for any compensation of unfair burden in providing such services. Regulation 23 specifies that the designated undertaking shall satisfy all reasonable requests to provide connection at a fixed location for national and international calls, and that such connection shall be capable of supporting voice, facsimile and data services. Regulation 24 establishes that the designated undertaking shall ensure that a comprehensive directory and an up-to-date directory enquiry services are available to all end-users. Regulation 25 establishes that public payphones shall be accessible to disabled end-users and shall meet the needs of end-users in terms of geographical coverage and quality of service. Regulation 26 specifies that the Authority shall ensure that disabled end-users can enjoy access to, and affordability of the services described in Part V of the Regulations. Regulation 27 describes that the USOs specified in regulations 23 to 26 shall be available at affordable rates and within the average consumer income, and that the Authority has the right to monitor the evolution and level of retail tariffs. Regulations 28 and 29 specify that end-users shall have the facility to control their expenditure to avoid any unwanted disconnection of services and shall publish up-to-date information on its performance in terms of quality of service in relation to its provision of the universal services.

The Authority may designate one or more undertakings for a period of time that may be specified by the MCA in order for the undertaking to comply with the obligations referred to in regulations 23 to 29. In designating an undertaking, the MCA is required to adopt an efficient, objective, transparent and non-discriminatory designation mechanism whereby no undertaking is *a priori* excluded from being designated. The designation methods adopted must ensure that the above universal services are provided in a cost-effective manner and may be used as a means of determining the net cost of the USO.⁸

⁶ USD 2002/22/EC, Recital 8

⁷ MCA Act Article 4(3)

⁸ SL399.28, regulation 22(4)

4. UNIVERSAL SERVICE OBLIGATIONS

4.1 Provision of Voice Communications Service and of Broadband Internet Access Service at a Fixed Location

4.1.1 Connection at a Fixed Location

In line with the current Regulations, the MCA may specify requirements, which are to be complied with by a designated undertaking, in relation to the reasonableness of requests for connection at a fixed location to the public telephone network, for access to publicly available telephone services and for data communications at a fixed location.⁹

Although at present, on the Maltese islands the majority of the households have a connection at a fixed location, on the other hand, a number of households / businesses that within the last few years have moved to newly built-areas also require the provision of these services. Connection at a fixed location is also important for end-users to have an adequate broadband internet access services and to ensure that no end-users are in any way excluded from the digital society. Connection at a fixed location remains important to the modern society. The geographical and population characteristics of the Maltese Islands, including its small size and high population density are also taken into account and in its consultation the MCA had proposed that any request for the provision of connection and access at a fixed location emanating from within the Maltese Islands¹⁰ should be considered as reasonable. One of the respondents noted that it considers that the provision of the universal service for both voice communications services and broadband internet access service at a fixed location should only be applicable in case of an end-user's primary residence in line with recital 8 of the Universal Service Directive and recital 230 of the new EEC framework. This was also proposed in another recently published MCA consultation on 'Broadband as a Universal Service' which is limiting the eligibility, to premises which are permanent legal residential (home), or business (including not-for-profit organisation) premises. After taking into consideration the feedback it received, the contents of the 'Broadband as a Universal Service' consultation and the text in the EEC which is currently in the process of being transposed into national law, the MCA decided to limit the universal service to those connections of voice communications service and of broadband internet access service at a fixed location consisting of the end-users' primary residence, business premises including those used by microenterprises and small and medium-sized enterprises, and premises used by not-for-profit organisations.

As has been the case since the MCA's USO Decision of 2010, the application of a standard connection fee is not being included, since there could be extraordinary circumstances when a higher connection charge could be justifiable. One of the respondents highlighted that in some remote cases fixed voice communications and internet access services may not be accessible due to network limitations which go beyond the element of cost.

⁹ Ibid., regulation 23(3)(b)

¹⁰ Including Gozo and Comino

As per the USO Decision 2015, in view of the fact that access to voice communications service and broadband internet access service at a fixed location in the Maltese islands is being provided at an affordable rate by more than one network, the MCA is deciding to maintain the obligation on designated undertaking/s to provide access at a fixed location only where there are no other public communication networks able to provide such a connection at a fixed location to the end-users in a given area, at an affordable price. Conditions associated with the voice communications service are delineated further in section 4.1.2 below while those related to the broadband internet access service are delineated further in section 4.1.3 below.¹¹

The connection provided by the designated undertaking is required to enable voice communications services, and broadband internet access service. This is subject to prevailing technologies used by the majority of subscribers and technological feasibility.¹²

The designated operator has the obligation to provide connection at a fixed location consisting of the end-users' primary residence, business premises and premises used by not-for-profit organisations, as a minimum, for the purposes of stand-alone voice communications services or broadband internet access service.

4.1.2 Provision of Access to Voice Communications Service at a fixed location

A fundamental requirement of the universal service is to ensure that all consumers have access at an affordable price to voice communications services over the underlying connection, at a fixed location upon request which is also aligned with the EECC. According to the current Regulations, the designated undertaking needs to satisfy "all reasonable requests" for the provision of publicly available service over the network connection¹³. The currently designated universal service provider, GO plc, is presently required to satisfy the provision of this service on a nationwide level.

In the consultation referred to earlier, the MCA proposed that the voice communications service provided by the designated undertaking is required to enable end-users make and receive local and international calls, and support facsimile and data communications. This is subject to prevailing technologies used by the majority of subscribers and technological feasibility.¹⁴ Conditions associated with the latter requirement are delineated further in section 4.1.1 above.

In its feedback one of the respondents referred to the declining popularity of facsimile technology stating that its usage over the past years has been minimal and due to the continuous technology advancements and upgrades in electronic communications networks, certain legacy facsimile equipment is no longer supported and that there are alternative solutions that would work on a normal internet connection. The

¹¹ As stated in Section 4.1.3, the MCA published a separate public consultation on updating its 2011 Decision entitled "*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*" realigning the definition of 'Functional Internet Access'.

¹² SL399.28, regulation 23(1)

¹³ Ibid., regulation 23(2)

¹⁴ Ibid., regulation 23(1)

same respondent also stated that since a connection to a fixed location can be provided over other technologies, including mobile, and facsimile services could still not be supported due to technology limitations. It was thus suggested by the respondent that reference to facsimile technology is removed from universal service.

The respondent stated that the EECC definitions of ‘voice communications services’ or ‘public electronic communications network’ do not include facsimile technology and that its suggestion for the removal of facsimile technology as a universal service would follow the same direction of the EU. The MCA acknowledges that due to the advancement in technology and availability of alternative solutions, the usage of facsimile technology has declined substantially and also that the EECC is no longer including this technology as part of the universal service. To this effect, the MCA decided to withdraw the inclusion of facsimile technology as a universal service obligation. The current USO provider shall give prior notice to the general public, following the procedure stated in section 5.2 below, of any termination of compatibility with facsimile technology. Whenever possible, the undertaking should also provide assistance to facilitate a smooth transition to another technology.

4.1.3 Broadband Internet Access Service at a Fixed Location

As an integral part of the requirement for the provision of access at a fixed location, the Regulations state that any connection provided by a designated undertaking shall be capable of allowing end-users to make and receive data communications, at data rates that are sufficient to permit functional internet access. In 2011, the MCA updated the USO Decision after having published another decision entitled “*Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access*” realigning the definition of ‘Functional Internet Access’ to include broadband internet access specified in the same Decision. As part of the scope of the universal service pursuant to the above-mentioned Decision on Functional Internet Access, in case of market failure, a designated undertaking shall provide functional internet access as well as any other requirements found in the same Decision. In case that there is no other service provider providing such a service to the end-user, the designated undertaking shall satisfy the request of the end-user and provide access to this service. In August 2020, the MCA published a separate consultation to update the above-mentioned Decision in line with the provisions of the EECC entitled ‘Broadband as a Universal Service, ensuring the availability of an adequate broadband internet access service, including the underlying connection, at a fixed location’.

One of respondents suggested that the decision should specify that although broadband internet access service at a fixed location is part of the universal service obligations, the designated mechanism should be updated in such a way that different operators may be mandated to provide the service to specific end-users, and this obligation would not apply to all end-users as stated in the Broadband as a Universal Service consultation. The MCA would like to point out that as stated in Section 5 of this decision, the current designation to provide access at a fixed location, including Functional Internet Access, would not carry the new obligation relating to Broadband Internet Access Service until the respective consultation process and decision are completed.

Decision 1

The universal service shall include access to voice communications services and broadband internet access service at a fixed location in any given area where there are no other public communications networks in a position to provide connection at a fixed location (consisting of the end-users` primary residence, business premises including for microenterprises and small and medium-sized enterprises, and premises used by not-for-profit organisations) at an affordable price.

Such a connection must be capable of allowing end-users to make and receive local and international calls and data communications.

The MCA is withdrawing the inclusion of a facsimile communications service as an integral part of the universal service. The current USO provider shall give prior notice to the general public, following the procedure stated in section 5.2 below, of any termination of compatibility with facsimile technology. Whenever possible, the undertaking should also provide assistance to facilitate a smooth transition to another technology.

In case of market failure and where no other service provider is willing to provide functional internet access to the end-user requesting the service, the universal service shall include functional internet access and any other requirements listed in the MCA decision "Provision of Access at a Fixed Location - Requirements to be complied with by the Universal Service Provider in relation to Functional Internet Access" *.

The universal service provider shall provide end-users with the option to, as a minimum, choose either access to voice communications services or broadband internet access service at a fixed location as a standalone service without the requirement to enrol into any other Electronic Communication Services.

The MCA reserves the right to monitor and review this decision in accordance with its powers at law to ensure affordability.

** Note: The MCA consulted separately on updating this decision to ensure the availability of an adequate broadband internet access service as a universal service. As specified in Section 5 and Decision 10 below, the obligations for functional internet access as last defined in the USO Decision of 2015 shall continue to apply until a new decision comes into force.*

4.2 Directory Enquiry Services and Directories

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

- a comprehensive directory, which includes all subscribers of publicly available telephone service providers, is made available to all end-users in a form approved by the Authority, whether printed or electronic, or both, as the MCA may determine, and is updated at least once every year; and
- a comprehensive telephone directory enquiry service is made available to all end-users, including users of public payphones.¹⁵

In order to enable the provision of directories and directory enquiry services, Regulation 42(2) of the current Regulations further specifies that any undertaking which assigns telephone numbers to subscribers shall make available the relevant information to providers of directory enquiry services and directories¹⁶ in accordance with an agreed format and on terms which are fair, objective, cost oriented and non-discriminatory. In April 2015, the MCA published a separate decision entitled 'Decision on the Wholesale Access to Data and the Provision of Publicly Available Directory Information Services' determining the conditions under which an undertaking is required to share subscriber directory information with providers of directory services.¹⁷ These included electronic directories; directory enquiry services; and printed directories.

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

One of the respondents to the consultation stated that it supports the need of an enhanced and up-to-date directory and directory enquiry service to the benefit of end-users. It also mentioned that service providers are obliged to provide their subscribers' data to the designated undertaking, however if other service providers are desirous to offer directory services, a General Authorisation from the Authority may be required. The MCA would like to note that a General Authorisation category for the provision of directory services is already in place and any stakeholders that wishes to provide such services may notify the MCA under the category 'Publicly available telephone directories and directory enquiry services'. Additionally, the same respondent also stated that the issue of cost of data based on commercial negotiations and against payment is not addressed and mentioned that as a service provider it follows the General Data Protection Regulation and allows access to consumers information of those subscribers that opted in to include their information as part of the directory services. The MCA believes that these matters have already been addressed in a separate public consultation and in the above-mentioned decision on the wholesale access to data and the provision of publicly available directory information services.

¹⁵ Ibid., regulation 27(1)

¹⁶ Including the provider/s which may be designated to provide a directory or directory enquiry services as a universal service obligation

¹⁷ Link to Decision: <https://www.mca.org.mt/consultations-decisions/decision-wholesale-access-data-and-provision-publicly-available-directory>

As in the case of the USO Decision published in 2015, the provision of the printed directory and the directory enquiry services would not form part of the universal service obligations.

4.2.1 Comprehensive electronic directory

The provision of a comprehensive electronic directory is being provided as a universal service by GO through its public Internet website¹⁸. This directory has been available to the general public since 2006, and provides telephone numbers (fixed and mobile) of all those subscribers consenting to include their personal details for a directory information service. In the USO Decision of 2015, the MCA had decided that the printed directory and the directory enquiry services shall no longer be part of the universal service obligations.

Due to the significant proliferation of smartphones and internet access, the need to easily and promptly have access to the comprehensive electronic directory also whilst on the move, has also been created. Since in its nature a smartphone has a smaller screen size than a conventional PC, apart from a large-screen web-based interface, the comprehensive electronic telephone directory on GO's website has an interface that is mobile friendly for all smartphone users.

In the USO Decision of 2015, the MCA had introduced an obligation on the designated undertaking to include an interface specifically for smartphone users for the above purpose. In order to meet its universal service obligations, GO decided to create an application for all smartphone users. In 2020, the MCA requested information on the number of downloads from when the application was first launched in December 2016. It transpires that although several thousand users downloaded the app on their mobile device, by March 2020 more than 80% of users had removed the app from their device. GO had also communicated with the Authority stating that in the meantime instead of the app, it developed an online directory facility that provides the same user experience of the application and is optimised for mobile devices.

Since end-users are already being provided with a comprehensive electronic telephone directory whose interface is mobile friendly, is being updated in real time whenever technically possible and is free of charge to the end-user, the MCA had proposed to retain this universal service obligation given that the designated undertaking does not incur any unfair burden that requires funding to sustain the service.

However, in view of the fact that websites have become universally accessible and functional not only from large-screen devices but from a variety of small-screen and touch-interface devices, the MCA believes that it should no longer require the inclusion of an interface that caters specifically for smartphone users as long as it provides the same user experience. One of the respondents agreed that websites have become universally accessible and functional also from mobile devices and concurred with the MCA's proposal to remove the obligation for the provision of an interface that caters specifically for smartphone users.

¹⁸ Link to GO's electronic directory: <http://www.go.com.mt>

As a result of the rationale depicted above the MCA is retaining the content of its proposed decision.

Decision 2

The universal service shall include the provision of a comprehensive electronic telephone directory service free of charge and updated in real-time whenever technically possible. The comprehensive electronic directory shall, as a minimum, be:

- 1. web-based;**
- 2. effectively provide the opportunity to easily and promptly look up subscribers of voice communications services in Malta regardless of technology and provider.**

All voice communications service providers shall ensure that their consenting subscribers' directory-related data is made available, in real-time whenever technically feasible, to the requesting authorised 'publicly available telephone directories and directory enquiry services' provider, which includes the designated undertaking for the sole purpose of providing directory information services.

4.3 Public Payphones

In accordance with the current Regulations, public payphones shall be made available to meet the needs of end-users in terms of geographical coverage, quantity, accessibility to disabled users, and quality of service.¹⁹ This universal service is also considered in the EEC subject to the necessity and the national circumstances of the Member State which allows for keeping existing universal services already in place.²⁰

During the past USO Decisions (namely those of 2010 and 2015), the MCA took into consideration the declining use of such payphones and the increased proliferation of mobile devices. In order to ensure an overall coverage of payphones across the Maltese islands, in 2010 the MCA had established a set of parameters based on minimum requirement of number of payphones in each locality subject to the number of population of the area. When calculating the minimum requirement of payphones, the total number amounted to one hundred and eighty four payphones across the Maltese islands. In 2015, GO was still providing services at five hundred and twenty payphones.

In the current framework, the designated undertaking is also required to ensure that these public payphones enable end-users to make calls to the '112' emergency number and to any other national emergency call numbers free of charge without the necessity to use coins or any other means of payment.²¹ One of the respondents referred to the provision of a free of charge SMS to 112 emergency service number and on reverse 112 number, however the MCA would like to point out that the 112 emergency service

¹⁹ SL399.28, regulation 25 (1).

²⁰ Directive 2018/1972, Article 87.

²¹ SL399.28, regulation 25 (4).

number is outside the scope of the universal service obligations since as per the Regulations such an emergency service is provided by all publicly available telephone service providers.

The designated undertaking is also required to ensure that these payphones offer access to directory enquiry services.²² In its previous USO Decisions, the Authority had established that the number of payphone calls made to local and foreign numbers decreased substantially over time. The MCA continues to monitor the usage of such payphones by the general public on an ongoing basis and it transpires that such traffic has continued on a drastic downward trend as shown in the table below.

| Total number of calls made from Payphones to national and international numbers | | |
|----------------------------------------------------------------------------------------|----------------|--------------|
| Year | 2015 | 2019 |
| Total calls made | 606,665 | 5,243 |

Table 1

Most of the payphones, especially those located in rural areas, besides operating at a considerable loss, are hardly being utilised, with very low revenues recorded, and at times none.

Furthermore, various Local Councils continue to make several requests for the removal of such payphones due to embellishment of areas, inappropriate use of the payphones (illegal matters), and lack of usage. Considering that such requests are made directly by the Local Councils, the MCA granted such requests by way of derogation from meeting the minimum number of payphones established for some localities under the USO Decision of 2015.

Information received from GO shows that the usage of public payphones has decreased drastically over the past years, and during the first quarter of 2020 only a few payphones were used. GO has also indicated to the MCA that since access to emergency services is readily available from mobile phones, public payphones do not add any additional benefit in this respect.

In view of the above considerations, and in particular given that the proliferation of mobile services is very high amongst Maltese society, the MCA believes that the provision of public payphones as a universal service obligation has become commercially obsolete.

At the same time, the MCA acknowledges that some stakeholders may wish to keep the service of public payphones active as a fall-back option in the case of public facilities such as, but not limited to, corrective facilities, hospitals, etc. under a commercial agreement. One of the respondents stated that keeping the service functional just for a minimal number of payphones would still require a platform that is outdated and as a result further investment to change/update it would not be economically feasible given the low usage. Nevertheless, the respondent also stated that there are alternative proven solutions that would provide similar functions to that of a payphone and it can be provided to interested public entities. The MCA acknowledges that alternative solutions are already being used successfully and that interested public

²² Ibid., regulation 25 (5).

entities can be provided with a connection and service that provides similar functions to payphones using alternative technological solutions.

Additionally, a number of phone booths around the Maltese islands may be considered representative of different historical eras and are consequently protected by the Planning Authority. This implies that no removal, alterations, interventions, or other developments may be permitted on such phone booths without prior authorisation from the Planning Authority.

In view of such circumstances, as the formerly designated undertaking, GO plc would be expected to endeavour to reach a commercial agreement with the responsible person/s of public facilities that wish to keep the service of public payphones active and to provide other alternative technological solutions having similar functionalities to those of a public payphone, and to ensure that all requirements of other Authorities and/or Governmental entities (such as the Planning Authority and/or the Lands Authority) which could be relevant to the removal or otherwise of phone booths are observed.

During its public consultation, the MCA invited various stakeholders to submit their written feedback on the withdrawal of public payphones as a universal service. A respondent agreed with the MCA's statement that the utilisation of this service has declined substantially over the years and an increasing number of Local Councils are requesting the removal of a number of public payphones. It also stated that the removal of this obligation would also be in line with the position several other EU countries have taken on public payphones. None of the other respondents have expressed any concerns relating to this proposal.

Following a comprehensive analysis of the feedback received, the MCA is retaining the contents of its proposed decision and the provision of public payphones as a universal service is being withdrawn.

Decision 3

The obligation for the provision of public payphones as a universal service is being withdrawn.

As the former designated undertaking, GO plc shall endeavour to reach a commercial agreement with the responsible person/s of public facilities that are desirous of keeping the service of public payphones active (such as *inter alia* hospitals, corrective facilities etc.) and to provide other alternative technological solutions having similar functionalities to those of a public payphone.

This is without prejudice to any other additional requirements of other Authorities and/or Government entities which could be relevant to the removal or otherwise of phone booths.

4.4 Specific Measures for Vulnerable Users

According to the current Regulations, the MCA may specify obligations on a designated undertaking for the purpose of ensuring that disabled end-users can access publicly available telephone services equivalent to those enjoyed by other end-users at an affordable rate, including access to emergency services, directory enquiry services, and directories.²³

Also in line with the current Regulations, the MCA may, in the light of national conditions, specify certain requirements on a designated undertaking for the purpose of ensuring that those on low incomes or with special social needs are not prevented from accessing the network or from using the services falling under the universal service obligations provided by designated undertakings.

The USO Decision published in 2015 required GO, as the undertaking designated to provide specific measures for disabled end-users, to provide free directory enquiry services for visually impaired persons, a 'Telecare' type of service, as well as a reduced 'line-rental' tariff scheme to eligible subscribers specifically included in a list provided by the responsible Government entity. Given that these measures were well received by disabled end-users, in its consultation the MCA had proposed to retain these universal service obligations under the same conditions.

Two of the respondents to the public consultation made reference to the provision of internet connection at an affordable price to vulnerable people who are at risk of poverty, social and digital exclusion. One of the respondents mentioned that the universal service provider should go further in this provision and offer some free data to vulnerable users. The other respondent showed its interest in any future work related to this aspect in view of the needs of their service users. The MCA would like to point out that any measures to ensure affordability of broadband internet access service to vulnerable users shall be treated in the next upcoming decision following the transposition of the EECC into national law.

4.4.1 Free directory enquiry services for visually impaired persons

The designated undertaking is currently required to provide one call free of charge per week to a directory enquiry service to eligible visually impaired persons who are included in a list specifically provided by the responsible Government entity.

If the undertaking foresees that the number of people using this facility is excessive, to the extent that it requires funding to sustain the unfair burden, it shall inform the MCA accordingly. The Authority shall decide whether such a list should be capped to a maximum number of people, and if this is not the case, a funding option would need to be considered.

One of the respondents mentioned that it does not in principle oppose this proposal, however, it considers that such measures should not be imposed as obligations given that visually impaired persons are already assisted and such assistance is often also tailored for in the case of changing technological advances. For

²³ Ibid., regulation 26 (1)

instance, the MCA's recent requests, on behalf of the Commission for the Rights of Persons with Disability, to provide visually impaired persons with tailor made mobile services at affordable rates was catered for. Another respondent stated that this measure is beneficial to vulnerable cohorts. The MCA acknowledges the universal service provider's involvement in providing its services to enable people participate in society and community life. The MCA is of the opinion that this universal service obligation should be maintained as it further supports eligible visually impaired persons to reach people by enquiring the number with the service provider.

Decision 4

The universal service shall include the provision of one call free of charge per week to a directory enquiry service number to eligible visually impaired persons which are included in a list specifically provided by the responsible Government entity.

4.4.2 'Telecare' type of service allowing easy access to emergency services

The "Telecare" type of service, which has been provided for a number of years, includes an alarm unit that automatically dials a control centre once it is activated by vulnerable users, either by a large button on the telephone set, or by means of a button found in a portable pendant worn by the person concerned. The MCA considers that there is no need to impose any additional functionality as a Universal Service obligation.

The designated undertaking is allowed to charge subscribers who are not benefiting from reduced tariff schemes (currently in place for social reasons) a nominal deposit for misplaced, lost or damaged Customer Premises Equipment (CPE) pendants. However, if the number of misplaced CPEs is high, with the effect that the designated undertaking is incurring a substantial cost, it shall inform the Authority accordingly. The nominal charge should be reflective of the cost of the pendant, and should either be deducted from any deposit received, or charged directly to the end-user.

One of the respondents mentioned that the Telecare service is expensive to run and it is viable subject that it remains financed from public funds. The MCA would like to note that as per previous years, the source of funding of the USO is discussed in a separate consultation. Another respondent has mentioned that the Telecare type of service is beneficial to vulnerable cohorts. It also mentioned different cases and scenarios involving the day to day running of the service including the possibility of informing Telecare end-users whether they are in possession of the Government Pink Card. The MCA considers that both respondents in general agreed with its proposals and decided to retain the contents of its proposed decision.

Decision 5

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

The designated undertaking may collect a nominal deposit for all new ‘Telecare’ subscribers who are not benefiting from the reduced tariff scheme.

Any misplaced, lost, or damaged ‘Telecare Pendants’ shall be replaced against a reasonable charge that may be levied by the designated undertaking, or deducted from any deposit collected, to cover its cost.

4.5 Reduced Tariff Options for Users on Low Incomes or on Special Social Needs

The MCA may require the designated undertaking to provide reduced tariff options or packages which are lower than those offered to other subscribers, so that persons on a low income or with special social needs and affordability issues, may have access to such universal services.²⁴

The USO Decision of 2015 required GO, as the undertaking designated to provide reduced tariff options as a universal service, to provide a reduced ‘line-rental’ tariff scheme to eligible subscribers specifically included in a list provided by the responsible Government entity. The MCA is of the opinion that this scheme has met the objectives of the universal service successfully and therefore should be maintained. In view of social developments and the upcoming transposition of the EECC, such measures may require further consultation and updating in the future.

One of the respondents of the consultation stated that the reduction in tariffs provided to eligible consumers is substantial and such service would only be viable if it remains being financed from public funds. The MCA would like to point out that as in the case of previous years, the source of funding of the USO is treated in a separate consultation issued by the MCA. Another respondent has mentioned that the telephone rebate system is beneficial to vulnerable cohorts and will still apply even if the eligible clients decide to opt for more services from the USO provider. The MCA agrees that if it is technically possible the clients may also purchase other services from the USO provider together with the reduced tariff option, subject that it is in line with the criteria set by the responsible Government entity.

Decision 6

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

²⁴ Ibid., regulation 27 (2)

4.6 Control of Expenditure by users

The MCA recognises the importance of facilities through which end-users may monitor and control expenditure in order to ensure continued affordability and avoid any unwanted disconnection of services. The USO Decision of 2015 established that the services to be provided to help such monitoring and control by the end-user are selective call barring for outgoing calls, and pre-payment facilities. These services are also included in the EECC.

Since the Authority considers that the facilities provided as per the USO Decision of 2015 reached this goal, it had proposed to retain (with some modifications) the obligation for provision of these services as measures for end-users to control their monthly expenses in the manner described in Part A of the Fourth Schedule of the Regulations.²⁵

4.6.1 Free of charge selective call barring for outgoing calls

The Regulations state that the designated undertaking shall provide the facility where a subscriber can request to bar outgoing calls, or particular types of numbers such as premium rate services, as a means for consumers to control expenditure free of charge.²⁶

The MCA had proposed to retain the USO decision of 2015 in which the designated undertaking provides the possibility for consumers to be in a position to either block all outgoing calls, or selectively block calls to particular types of numbers including calls to mobile, international and premium rates services, or outgoing calls which incur a comparatively higher price than calls to local fixed telephone numbers. This service shall continue to be provided free of charge.

One of the respondents stated that the facility of call barring existed since before Malta became a member of the European Union when all types of calls, but mostly mobile and international calls were significantly more expensive, whereas today, call rates are significantly lower and include options such as unlimited bundles. The respondent also argued that it believes that free call barring obligations should be withdrawn since customers have other measures to control their expenditure and avoid possible bill shock. It also mentioned that if the MCA still considers that call barring facilities are still relevant, it believes that it should be provided to all end-users. The MCA is of the opinion that the call barring facility is still relevant to the end-users in need to control their expenditure and acknowledges that in accordance with the EECC all end-users could benefit from this service. The Authority would also like to point out that an obligation for all end-users to be provided with a free-of-charge call barring facility to block calls to voice premium rate services is already in place²⁷. Furthermore, as mentioned earlier in the document, the MCA shall issue another public consultation in line with EECC framework following the transposition of the EECC into national law.

²⁵ Ibid., Fourth Schedule thereof. See also Article 28(2) and Recital (15) of Directive 2002/22/EC.

²⁶ SL399.28 Fourth Schedule, Part A (2)

²⁷ MCA Decision “A Framework for Premium Rate Services in the ‘5’ Numbering Range”

The MCA has decided to retain the proposed decision for this interim decision.

Decision 7

The designated undertaking shall provide a selective call barring facility free of charge to block:

- **mobile calls**
- **international calls**
- **premium rate services**
- **all outgoing calls***

This decision shall be without prejudice to any other decision or directive that may be published by the MCA extending such obligations to other operators in accordance with the law.

***Calls to emergency services '112' should never be barred. Calls to "free to caller" numbers should not be barred when technically feasible.**

4.6.2 Pre-payment services

As part of the facilities available for the consumer to control expenditure, the current Regulations empower the Authority to require a designated undertaking to provide a means for which consumers pay for telephony access and services on pre-payment terms.

GO, as the designated undertaking, satisfied this obligation emanating from previous USO Decisions by means of a pre-paid service called '*Easyline*'. This service allowed subscribers to pay in advance rather than pay rent or receive a bill for previous calls on a monthly basis. This scheme was aimed at allowing consumers to have more control on their telephone expenditure and plan the cost of their phone bill up-front.

Given that market developments led to the availability of pre-paid mobile plans that are comparable to the *Easyline* service, taking into consideration potential technical challenges and financial burden for the continuation of the provision of the *Easyline* service in the coming years, the MCA proposed that the designated undertaking may offer other means for consumers to pay for access to and use of voice communications services on pre-paid terms at affordable tariffs. One of the respondents to the public consultation agreed with the MCA's observation that there are pre-paid mobile plans in the market that are comparable to the *Easyline* service and that a pre-payment service can be offered with any type of voice communications service. As a result, the MCA is keeping the decision as originally proposed in its consultation.

Decision 8

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

4.7 Quality of Service

In accordance with the current Regulations, the designated undertaking/s which is/are responsible to provide specific universal services, shall publish up-to-date information on their annual performance in relation to the provision of the universal services.²⁸ The decision entitled '*Measuring Authorised Operator Quality of Service Performance*' published by the MCA in 2005 (updated in 2012) established that the USO service provider of fixed telephony is required to publish Quality of Service (QoS) performance results on an annual basis. The MCA is taking into consideration that, over the years, diverse operators have entered the market, and also the various work streams undertaken by the Authority itself on quality of service, establishing parameters to be measured by internet access service providers and mobile networks. To this effect, the MCA believes that quality of service measurement parameters are adequately catering for diverse service providers, such that imposition of regular measurement and publication obligations specifically on the designated universal service provider is no longer warranted.

One of the respondents stated that it agrees that regular quality of service measurement and publications obligations are no longer warranted. The MCA reserves the right to request information that may be required on an *ad hoc* as the need arises.

Decision 9

The designated universal service undertaking/s is/are required to provide up-to-date information on its/their performance of the universal service in question when requested by the Authority.

²⁸ Ibid., regulation 29 (1).

5. COMING INTO FORCE OF REVISED UNIVERSAL SERVICES

As established in the current Regulations and as stated earlier in this document, the Authority may designate different undertakings, or sets of undertakings, to provide different elements of the universal services. Given that the transposition of the EECC into National Law still needs to materialise, and as a result another consultation would then need to take place, the MCA presently considers that an increase in obligations on the currently designated operator prior to the establishment of a comprehensive designation process would not be appropriate.

To this effect, the MCA presently considers that where the components of the universal services are set to increase by way of this decision, the implementation is put off until after such a respective designation process is carried out. During the interim period, the currently designated undertaking shall only remain bound to honor the obligations as they were set in the USO Decision of 2015 unless any of these obligations are specifically withdrawn as a result of this Decision, as is being considered in the case of the provision of payphones as a Universal Service.

5.1 Increased universal service obligations

The Authority is taking into consideration that the obligation to provide a Broadband Internet Access at a fixed location is set to increase as a result of the separate consultation undertaken by the MCA. To this effect, the MCA decides that the current designation to provide access at a fixed location, including Functional Internet Access, would not carry the new obligation relating to Broadband Internet Access Service until the respective separate consultation process and decision are completed. In the meantime, the obligation relating to functional internet access as included in the USO Decision of 2015 shall continue to apply.

Decision 10

The obligations for functional internet access as last defined in the USO Decision of 2015 shall continue to apply until a new designation process comes into force.

5.2 Existing/reduced universal service obligations

The Authority is taking into consideration that a number of obligations defined in the USO Decision of 2015 are set to remain substantially the same, or be reduced or withdrawn, as a result of this decision. In case the USO provider plans to terminate, or amend, a service listed below, it should provide the MCA with a proposed amendment or withdrawal timeframe so that if deemed necessary the general public may be adequately informed:

- Connection at a fixed location
- Comprehensive electronic directory service;
- Withdrawal of Public Payphones;
- Specific Measures for Vulnerable Users;
- Reduced Tariff Options for Users on Low Incomes or on Special Social Needs;
- Control of Expenditure by Users; and
- Quality of Service.

Decision 11

The universal service obligations as set by Decision 1* to Decision 9 in this document shall come into force with immediate effect.

***Note: Except for any changes to the functional internet access obligations, as provided for in Decision 10 above.**

6. COSTING & FINANCING OF UNIVERSAL SERVICE OBLIGATIONS

In accordance with the Regulations, an undertaking designated to provide all or part of the universal services may seek to receive funds for the net costs incurred and representing an 'unfair burden' due to the obligations mentioned in Section 4 of this document. The undertaking may submit to the Authority a written request for funding with detailed information supporting its claim. This claim should be presented in a way that would enable the MCA determine whether the provision of the universal service obligations has actually resulted in an unfair burden on the undertaking.²⁹

6.1 Time Period for Requesting Funds

In the 2015 Decision, the MCA had established a timeframe by when a request for funding must be made in order to avoid any commercial and legal uncertainty. The MCA had proposed to retain the same time period. Hence by not later than eleven months following the end of the financial year, an undertaking may submit a written request to the Authority requesting financing for the net costs it suffered in providing the universal service obligations. One of the respondents stated that the time period of eleven months from the end of the financial year is excessive. The MCA believes that from the experience it accumulated over the past years when assessing the USO funding claims, the eleven month timeframe is appropriate in order to provide the USO provider adequate time to submit the necessary documentation for the audit exercise. To this effect, the MCA has decided to maintain the proposed timeframe of eleven months.

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

Decision 12

Any request for funding shall be received in writing by the MCA by not later than eleven months following the end of the said financial year. The relevant period of assessing a request for funding shall be the most recent completed financial year of the undertaking.

6.2 Provision of Information in the Funding Request

An undertaking wishing to submit a request for funding shall provide the MCA with sufficient and detailed evidence to substantiate its claim that the provision of a universal service has resulted in the calculated financial unfair burden. When claiming for the net costs arising from the various components of the universal services, any market benefits accrued by the undertaking shall also be taken into account. The requirements as set in Sixth Schedule of the current Regulations are to be followed.

²⁹ Ibid., regulation 30 (1) and (2)

The MCA reserves the right to reject any claim for funding which is inadequately substantiated, and to request any other information, or more detail than that submitted in the application by the undertaking, if it deems it necessary to be in a position to reach its decision.

Decision 13

The undertaking requesting funding shall provide the MCA with sufficient and detailed evidence supporting the claim that it has suffered an unfair burden in the provision of the universal service.

This evidence shall include a consideration of net costs and any market benefits accrued to the undertaking as a result of the universal service being provided as set in the Sixth Schedule of the Regulations.

The burden of proof for each Universal Service shall rest with the said undertaking.

6.3 Funding Request Evaluation

Once a claim for USO funding with all the supporting evidence is received within the established timeframe as stipulated in section 6.2 above, the MCA, or an appointed independent body,³⁰ shall initiate an evaluation process to assess and determine whether the amount claimed is justified and was incurred in order to provide universal services outside normal commercial conditions. Any market benefits accrued by the designated undertaking shall also be included in the application, as specified in more detail in Part A of the Sixth Schedule of the current Regulations.³¹ The results of the cost calculation and the conclusions of the audit shall be made publicly available.

The evaluation process shall consist of two phases namely:

- (1) A Reasonability Phase; and
- (2) A Calculation Phase.

6.3.1 Reasonability phase

The objective of this phase is to analyse the validity of the reasoning that the designated undertaking has used to support its claim, and assesses the following elements:

- the grounds on which the claim/s for funding are based;
- whether the claim/s is coherent with regulatory principles;
- the extent to which the claimed funding is attributed to universal service obligations; and
- the approach used to quantify the intangible benefit aspect.

³⁰ Ibid., regulation 30 (7).

³¹ Ibid., regulation 30 (4).

6.3.2 Calculation Phase

This phase only applies if, and to the extent that, the outcome of the Reasoning Phase deems the reasons behind the funding claim as valid.

The Calculation Phase shall include an auditing and a verification exercise on the various calculations used in the claim submitted by the designated undertaking. This would include a calculation exercise in order to establish that the inputs and workings used to quantify the net costs to provide the universal service in question are accurate.

The net cost of the USO is calculated as the difference between the net cost a designated undertaking incurred to provide a service with the universal service obligation, as opposed to operating the service without the universal service obligation. Any intangible benefits enjoyed by the designated undertaking shall also be taken into account.³²

6.4 Source of funding

If, following the evaluation process, a designated undertaking is found to have suffered an unfair burden, the source of funding to compensate for the net costs, shall be decided on a case by case basis, depending on the nature of the Universal Service in question.

As established in the Regulations the source of USO funding shall be one, or a combination, of the following options:

- from public funds with the approval of the government; and/ or³²
- by means of a sharing mechanism between providers of electronic communications networks and services.³³

A sharing mechanism, if required, should be set up on the basis of transparency, least market distortion, non-discrimination and proportionality, and be subject to the principles of Part B of the Sixth Schedule of the current Regulations. Given that the main USO funding component has emanated from Social Tariffs, to date the financing has been sourced from public funds.

One of the respondents to the consultation stated that it strongly disagrees with any cost sharing mechanism however if such a mechanism is considered for future applications, it is necessary that companies are given the opportunity to plan ahead in terms of annual budgets and expenses. Furthermore, ideally funding mechanism should not be implemented retrospectively but on a forward-looking basis. This respondent also stated that no universal service obligations should be in place given the increase penetration and enhanced coverage of fixed, mobile and wireless communications in Malta and in view of

³² Ibid., regulation Part A of the Sixth Schedule.

³³ Ibid., regulation 31(1).

this, any funding of such obligations should be sourced from existing regulatory taxes on the industry. The same respondent was of the view that any funding mechanism must always take into account the profit made by the designated undertaking and this must be deducted from the compensation for the universal service.

The MCA would like to reiterate that the element of source of funding for the USO is addressed by means of a separate consultation, as was the case in previous years.

7. CONCLUSIONS

The MCA shall continue to monitor the provision of all aspects of the universal service as described in this decision to ensure that the services forming part of the universal services are made available to all end-users. A fresh public consultation on the universal service obligations shall be published to take into account the transposition of the EECC into National Law.