



# CONSULTATION DOCUMENT


## REVIEW OF 'MUST CARRY' OBLIGATIONS

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## Executive Summary

Undertakings of certain electronic communications networks and services used for the distribution of television (TV) broadcast channels to the public (also referred to as 'TV platforms'), that are used by a significant number of end-users as their principal means to receive TV broadcast channels, may be subject to reasonable 'must carry' obligations. This requires them to reserve part of their network capacity for the transmission of specified TV broadcast channels qualifying as meeting general interest objectives (GIOs).

In 2017 the Malta Communications Authority (MCA) mandated 'must carry' obligations on GO's Internet Protocol TV (IPTV) platform in addition to retaining 'must carry' obligations on Melita's Cable TV platform. Since 2017 the number of subscribers of these two pay-TV platforms has continued to increase. In addition, GO and Melita have continued to enhance their pay-TV platforms and also offer their end-users the possibility to watch TV broadcast channels on a range of internet-connected devices.

GO's IPTV platform and Melita's Cable TV platform continue to be used by a significant number of end-users as their principal means to receive TV broadcasts. The MCA is proposing, by means of this consultative process, that 'must carry' obligations continue to apply to the undertakings of these two pay-TV platforms.

As part of the 'must carry' obligations, the undertakings of these two TV platforms are required to:

1. reserve sufficient network capacity for the transmission of the identified General Interest (GI) TV broadcast channels and the related complementary services;
2. ensure that the audio-visual quality of the GI TV broadcast channel is retained at the same level of quality provided by the GI TV broadcaster to the undertaking; provided that 'must carry' obligations shall not extend to TV broadcasts in a video-resolution format higher than HD; and
3. transmit the GI TV broadcast channel *talé quale*, as provided by the GI TV broadcaster, and shall in no way alter the format and content of the transmission.

The consultation will run from **6 December 2022** to **18 January 2023**. Please refer to **Section 6** for further details about the submission of comments.

## Key Definitions

<p>General Interest (GI) TV broadcast channel / service</p>	<p>GI TV broadcast channel (also referred to a GI TV broadcast service) of a media service provider that is identified by the Broadcasting Authority (BA) as qualified to meet GIOs and thus entitled for 'must carry' status.</p>
<p>Media service provider</p>	<p>A media service provider means a natural or legal person who has editorial responsibility for the choice of the audio-visual content of the audio-visual media service and determines the manner in which it is organised (Broadcasting Act, Cap. 350).</p>
<p>GI broadcaster</p>	<p>A media service provider having editorial control over a GI TV broadcast channel.</p>
<p>TV broadcasting or TV broadcast</p>	<p>A linear audio-visual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule (Broadcasting Act, Cap. 350).</p>
<p>TV Platform</p>	<p>An electronic communications network and service used for the distribution of television broadcast channels to the public (e.g., cable, IPTV and terrestrial broadcasting networks).</p>
<p>Undertaking of a commercial TV Platform (also referred to as a Pay-TV Platform)</p>	<p>An undertaking authorised to provide electronic communications networks and services used for the distribution of TV broadcast channels, normally against subscription.</p>

## 1 Purpose and Scope

Undertakings of certain electronic communications networks and services used for the distribution of TV broadcast channels to the public, that are used by a significant number of end-users as their principal means to receive TV broadcasts, may be subject to reasonable 'must carry' obligations.<sup>1</sup> This requires them to carry TV broadcast channels of specified media service providers qualifying as meeting the GIOs.<sup>2</sup>

In 2017 the MCA mandated 'must carry' obligations on GO's IPTV platform in addition to retaining 'must carry' obligations on Melita's Cable TV platform. Since 2017 the number of subscribers of these two pay-TV platforms has continued to increase.

Driven by technological innovation in the electronic communications sector the world of audio-visual broadcasting has continued to change over the past years. The proliferation of robust and ubiquitous high-speed broadband internet access networks and services is altering the way audio-visual content is produced, transmitted, and ultimately consumed by viewers.

Linear TV transmission<sup>3</sup> of audio-visual content delivered to viewers over dedicated broadcast transmission networks, such as cable and broadband based internet protocol television (referred to as IPTV<sup>4</sup>), can be viewed and accessed via 'catch-up' and 'on demand' facilities. In addition, internet connectivity has made it possible to distribute and obtain access to an increasing number of sources of information and entertainment, including TV content.

TV broadcast channels can today be viewed on a wide range of internet-connected devices<sup>5</sup> over-the-top (OTT) of traditional distribution technologies. OTT services<sup>6</sup> (also referred to as video-streaming services) include on-demand services (i.e., for the viewing of programmes at the moment chosen by the user and at his individual request based on a catalogue of

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<sup>1</sup> Regulation 101 of the Electronic Communications Networks and Services (General) Regulations, SL 399.48.

<sup>2</sup> Article 40 of the Broadcasting Act, Cap 350 and the General Interest Objectives (Television Services) (Selection Criteria) Regulations (SL 350.32)

<sup>3</sup> Linear TV transmission refers to TV programmes consumed in real time at time of broadcast delivered through, among others, cable, IPTV, satellite and terrestrial broadcasting networks. These services may be free-to-view or pay-TV.

<sup>4</sup> IPTV is a controlled video and audio content delivery method that serves content through a managed network based on the Transmission Control Protocol/Internet Protocol (TCP/IP) suite. Users have to connect a set-top-box to the internet, usually via cable (over DSL or Fibre), to decode the receiving signal and display content on their TVs. Compared to the public internet, a managed 'private' network gives the network operator more control over the video traffic and, by extension, the ability to ensure quality of service, uptime, bandwidth and reliability.

<sup>5</sup> Connected devices (also referred to as OTT devices) are devices that plug directly into the TV and are connected to the internet, which enables apps and video streaming to be used on the television regardless if the TV itself is a smart TV.

<sup>6</sup> OTT delivers content over the public internet whilst IPTV operates in a closed network ecosystem.

programmes) and/or services that offer access to live streams of linear TV channels (i.e., for simultaneous viewing of programmes on the basis of a programme schedule) over the public internet.<sup>7</sup>

Undertakings of electronic communications networks and services have continued to increase both the coverage and capacity of their broadband networks in order to support present and future requirements of subscribers of broadband internet access services. In turn, the ubiquity of the broadband internet access services and the growth in the take-up of bundled packages<sup>8</sup>, have subsequently fuelled an expansion in demand for both TV platform services and OTT services in Malta. In fact, local undertakings of pay-TV platforms are adjusting their services to also support OTT TV content distribution, allowing their end-users to watch TV content over a range of internet-connected devices.

Media service providers have started to develop new and different routes to make their content available to viewers, such as by streaming their linear TV content and on-demand programmes over the public internet (through their websites and/or mobile Apps), in addition to publishing news articles, producing podcasts and posting content on social media platforms.<sup>9</sup>

Media service providers are also making their content available in HD video-resolution format, to match expected end-user viewing experience. Net neutrality provisions ensure that media service providers, as end-users of internet access services, can distribute their content to their viewers without discrimination.<sup>10</sup>

At the consumer level TV viewers have raised their expectations relative to their TV-viewing experience, as TV productions in HD video-resolution format are now mainstream. Moreover, the increased availability of TV broadcast channels in HD has accelerated the increase in ownership of HD enabled TV equipment by households in Malta.<sup>11</sup> In addition, consumers have started using smart TVs<sup>12</sup>, and other internet-connected devices (e.g.,

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<sup>7</sup> Refer to Section 3.1 (Video-streaming service definition) of [BEREC's 2021 report on harmonised definitions for indicators regarding OTT services, relevant to the electronic communications markets](#).

<sup>8</sup> Refer to [MCA's Annual Report and Financial Statements 2021](#) - (Pay-TV subscriptions in a bundle on page 38). Also refer to the [Key market indicators of electronic communications End Q2/2022](#) whereby around 82% of all TV subscriptions were purchased on a bundle plan at the end of the current reporting period.

<sup>9</sup> Today TV content can be offered by media service providers, provided an adequate broadband internet access service is available, without any gatekeeper in place (i.e., without the need for a TV distribution platform to gain access to consumers).

<sup>10</sup> [Regulation EU 2015/2120](#) on laying down measures concerning open internet access.

<sup>11</sup> 92% of those consumers having a TV set said that they own at least one HDTV - [MCA Perception Survey](#) re Pay-TV broadcasting services published November 2020.

<sup>12</sup> An internet connected TV set offers access to linear TV broadcast channels and third-party streaming apps.

smartphones/tablets and streaming sticks<sup>13</sup>) to access both linear and non-linear audio-visual content.

'Must carry' obligations are subject to periodic review to keep them up to date with technological and market evolution, and to ensure that they continue to be proportionate to the objectives to be achieved. Given the ongoing developments in the audio-visual broadcasting sector the MCA feels it is appropriate to review the 'must carry' obligations and propose changes where necessary.

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<sup>13</sup> A small device that plugs into an HDMI port on a TV or audio-visual receiver, allowing for the streaming of media.

## 2 Background

'Must carry' obligations aim at ensuring the transmission of TV broadcast channels of general interest by undertakings of electronic communications networks and services used for the distribution of TV broadcast channels to the public, while avoiding unreasonable burden on such TV platforms. The scope of 'must carry' obligations is limited by the requirements that a significant number of end-users use the TV platform concerned as their principal means to receive TV broadcast channels, and that such obligations are reviewed at regular intervals.

'Must carry' obligations owe their existence to concerns that commercial TV platforms may prefer to provide commercially successful TV broadcast channels, rather than the transmission of GI TV broadcast channels, if left unchecked. Such 'must carry' obligations ultimately guarantee end-user access to TV broadcast channels that meet GIOs. GI TV broadcasters also seek to be available on all relevant commercial TV platforms in order for their GI TV broadcast channel to reach the subscribers of the respective TV platforms.

Although it seems unlikely for an undertaking of a pay-TV platform operating in Malta to refuse the carriage of GI TV broadcast channels that can increase the attractiveness of its packages, appropriate 'must carry' obligations provide a safeguard for the transmission of all the GI TV broadcast channels.

In February 2012 the MCA issued a decision ([MCA/D/12-0768](#)) stating that GO does not need to be designated as having 'must carry' obligations on its digital terrestrial TV (DTTV) network, whilst Melita was designated as having 'must carry' obligations on both its analogue as well as its digital Cable TV networks. 'Must carry' obligations on GO's DTTV network would lead to inefficient use of spectrum as the equipment supplied by GO to its end-users allow them to receive the '*free-to-air*' GI TV broadcast channels, transmitted in unencrypted format on a separate multiplex from that of GO's DTTV platform.

In August 2013 the MCA issued a decision ([MCA/D/13-1683](#)) whereby 'must carry' obligations on Melita Cable analogue tier were no longer applicable. This decision was taken in light of the prevailing market conditions which clearly indicated a consistent decline in the number of subscribers, reaching a rather low percentage amount of overall TV network subscriptions. Spectrum efficiency issues characterised by analogue technology also had a significant bearing on the MCA's decision. Melita's analogue cable TV service was switched off in the last quarter of 2018.

In 2017 the MCA issued a decision ([MCA/D/17-2763](#)) mandating 'must carry' obligations on GO's IPTV platform, in addition to Melita's Cable TV platform, considering the consistent increase in subscriptions.



'Must carry' obligations are subject to periodic review to keep them up to date with technological and market evolution, and to ensure that they continue to be proportionate to the objectives to be achieved.

## 2.1 Legal basis for 'must carry' obligations

The legal basis for imposing 'must carry' obligations is found in the European Electronic Communications Code<sup>14</sup> (EECC) and transposed under Regulation 101 of the Electronic Communications Networks and Services (General) Regulations, S.L. 399.48<sup>15</sup> (hereinafter referred to as 'the Regulations').

*Regulation 101 states that:*

*"101. (1) The Authority [MCA] may impose reasonable 'must carry' obligations for the transmission of specified radio and television broadcast channels and related complementary services, in particular accessibility services to enable appropriate access for end-users with disabilities and data supporting connected television services and EPGs, on undertakings operating in Malta, providing electronic communications networks and services used for the distribution of radio or television broadcasts channels to the public, where a significant number of end-users of such networks and services use them as the principal means to receive radio and television broadcast channels:*

*Provided that the Authority shall impose such obligations where it considers that this is necessary to meet general interest objectives as are defined in accordance with national legislation and are proportionate and transparent.*

*(2) The Authority shall review 'must carry' obligations by not later than 21 December 2024 and thereafter every five years.*

*(3) Neither sub-regulation (1) and nor regulation 46(2) shall prejudice the ability of the Authority to determine appropriate remuneration, if any, in respect of measures taken in accordance with this regulation while ensuring that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services:*

*Provided that where the Authority provides for any such remuneration, it shall do so in a proportionate and transparent manner and shall before doing so, determine and make public the criteria for calculating such remuneration."*

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<sup>14</sup> Directive (EU) 2018/1972 of the European Parliament and the Council of 11 December 2018 establishing the European Electronic Communications Code - EECC (refer to Article 114 and Recital 308, 309 and 310).

<sup>15</sup> [Subsidiary Legislation 399.48: Electronic Communications Networks and Services \(General\) Regulations](#)

## 2.2 'Must carry' rules

Must carry' rules contain two aspects:

- **'Must carry' status:** granted to specified broadcasters that provide a GI TV broadcast channel as determined by the Broadcasting Authority (BA).<sup>16</sup>
- **'Must carry' obligations:** obligations for undertakings of specified TV platforms to reserve a part of their network capacity for the transmission of TV broadcast channels enjoying must-carry status (i.e., GI TV broadcast channels)<sup>17</sup>.

'Must carry' obligations apply to those undertakings within the jurisdiction of Malta authorised to provide electronic communications networks and services used for the distribution of TV broadcast channels to the public, where a significant number of end-users use them as their principal means to receive TV broadcasts.

Electronic communications networks and services used for the distribution of television broadcasts in Malta include cable, IPTV and terrestrial broadcasting networks.<sup>18</sup> GI TV broadcasters use these electronic communication networks and services used for the distribution of TV broadcast channels to the public in order to deliver their audio-visual media programmes, which serve the general interest.

'Must carry' obligations may include the transmission of complementary services specifically designed to enable equivalent access by end-users with disabilities (such as videotext, subtitling for end-users who are deaf or hard of hearing, audio description, spoken subtitles and sign language interpretation). In light of the growing provision and reception of connected television services and the continued importance of electronic programme guides (EPGs) for end-user choice, the transmission of programme-related data necessary to support connected television services and EPG<sup>19</sup> functionalities may also be included in 'must carry' obligations.<sup>20</sup>

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<sup>16</sup> Article 40 of the Broadcasting Act, Cap 350 and the General Interest Objectives (Television Services) (Selection Criteria) Regulations, S.L 350.32.

<sup>17</sup> 'Must carry' status, falls within the remit of the BA which is the national regulatory authority responsible for radio and TV content. 'Must carry' obligations fall within the remit of the MCA, which is the national regulatory authority responsible for, *inter alia*, electronic communications networks and services.

<sup>18</sup> Recital 310 of the EECC states that "Electronic communications networks and services used for the distribution of radio or television broadcasts to the public include cable, IPTV, satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts."

<sup>19</sup> A programme schedule, typically broadcast alongside digital television, to provide information on the content and scheduling of current and future television programmes. EPGs facilitate access and orientation to TV channels.

<sup>20</sup> As reflected in Recital 310 of the EECC it should be possible for such programme-related data to include information about the programme content and how to access it, but not the programme content itself.

The content of services delivered over electronic communications networks using electronic communications services, such as TV content, do not fall under the remit of the electronic communications regulation.<sup>21</sup> An operator offering OTT streaming services over the open internet is not regarded as an undertaking which provides an electronic communications network and service used for the distribution of TV broadcast channels to the public.<sup>22</sup> However, additional measures may be taken at national level, in compliance with EU law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.<sup>23</sup>

## 2.3 Commercial TV platforms - Sector status

Commercial TV platforms (also referred to as pay-TV platforms) in Malta used for the distribution of television broadcast channels to the public include:

- Cable TV platform operated by Melita;
- IPTV platform operated by GO; and
- DTTV platform operated by GO.

**Melita's Cable TV platform and GO's IPTV platform** - Melita offers a stand-alone Cable TV service and various TV packages [with a TV Box or TV App] bundled with internet and telephony.<sup>24</sup> GO offers a bundled package with IPTV and telephony together with the facility to bundle internet with TV.<sup>25</sup>

Melita and GO provide OTT TV streaming services as a complement to their pay-TV platforms, enabling end-users to access and view TV broadcast channels online on any internet-

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<sup>21</sup> Refer to article 5(3)(b) of Cap. 399 of the Laws of Malta whereby the provisions of the Act are without prejudice to: measures taken at European Union or national level, in accordance with European Union law, to pursue general interest objectives in particular relating to the protection of personal data and privacy, content regulation and audio-visual policy.

<sup>22</sup> As reflected in Recital 11 of the EEC: "The same undertaking, for example a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and services not covered under this Directive (EECC), such as the commercialisation of an offer of sound or television broadcasting content services, and therefore additional obligations can be imposed on such an undertaking in relation to its activity as a content provider or distributor, in accordance with provisions other than those of this Directive (EECC)".

<sup>23</sup> EU Member States are free to impose 'must carry' obligations outside those covered under the electronic communications regulation, in particular on undertakings which, without providing electronic communication networks, offer the live streaming of television programmes online - refer to (Case C-298/17 France Télévisions SA v Playmédia EU:C:2018:1017 (13 December 2018)).

<sup>24</sup> <https://www.melita.com/tv/tv-packages/>

<sup>25</sup> <https://www.go.com.mt/tv-plans>

connected device.<sup>26</sup> GO's OTT TV streaming service is also available to anyone having an internet connection.<sup>27</sup> A full channel list available on both Melita's Digital Cable TV platform and GO's IPTV platform can be viewed from their respective websites.<sup>28</sup>

Over the past years Melita and GO continued to expand the subscriber base of their respective pay-TV platforms. Data collected by the MCA shows that the distribution of pay-TV platform subscriptions as at end Q2 of 2022 is composed of 61% (110,431 subscriptions) on Melita's Cable TV platform whilst 37% (66,666 subscriptions) are subscribed with GO's IPTV platform.

**DTTV platform** - In June 2022 GO's licence for the establishment and operation of a DTTV network was extended until the end of February 2023.<sup>29</sup> GO's DTTV network service consists of four national multiplexes [operating DVB-T, MPEG2 in which all content is offered in Standard Definition (SD) video resolution format].

Since the last review of 'must carry' obligations in 2016, GO's DTTV subscriber base has continued to fall (2,098 subscribers at the end of Q2/2022<sup>30</sup>), in line with GO's drive to migrate its subscribers to its IPTV platform, which continued to gather traction as a result. GO's IPTV platform offers superior features than those available on its DTTV platform, such as simultaneous recording and the carriage of a significantly higher number of both local and foreign TV broadcast channels. GO has expressed its intent to cease operating its DTTV platform after the expiry of its licence at the end of February 2023.

As from March 2023 twelve radio spectrum channels<sup>31</sup> will be available until 2030 for the operation of a commercial DTTV network, should an undertaking express interest in the rights of use of radio spectrum.<sup>32</sup> As reflected in the MCA's Decision on 'The assignment process of radio spectrum in the sub-700MHz band for DTTV services in Malta ([MCA/D/20/3934](#))', the future use of the spectrum beyond December 2030 will be decided at later stage, in line with

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<sup>26</sup> With the NexTV App end-users can watch NexTV across devices such as a smartphone or tablet. The Melita NexTV App can be downloaded directly onto a smart TV and is available to new customers as a Flexi Bundle option without the NexTV Box (<https://www.melita.com/tv/nexTV/android-tv-app/>).

<sup>27</sup> The GO TV App can be downloaded on a mobile, tablet, Android Smart TV, Apple TV or Fire TV. A Chromecast device can also be used.

<sup>28</sup> Refer to <https://www.melita.com/tv-channels/> and <https://www.go.com.mt/tv-channel-list/>

<sup>29</sup> [Licence for the rights of use of radio spectrum for the establishment and operation of a DTTV network.](#)

<sup>30</sup> There were 45,640 subscribers to GO's DTTV platform in 2016.

<sup>31</sup> In addition to the five UHF broadcasting channel registered for use by Malta under the GE06 an additional eight UHF broadcasting channels (21, 22, 23, 25, 26, 30, 33 and 39) have been coordinated between Malta and Italy and can also be used for the provision of DTT services.

<sup>32</sup> Refer to MCA's Decision on "The assignment process of radio spectrum in the sub-700MHz band for DTTV services in Malta ([MCA/D/20/3934](#)). MCA's Decision states that 'although DVB-T or DVB-T2 are the preferred network technologies, in line with the principle of technology neutrality, while ensuring that the spectrum is used in an efficient and effective way, the 470 – 694 MHz spectrum band will be awarded on a technology neutral basis.'

the outcome of a review to be carried out by the European Commission by 2025, and with any harmonisation rules applicable for this spectrum band at the time.<sup>33</sup>

DTTV technology has been constantly evolving. The transmission standard has migrated from DVB-T (1997) to DVB-T2 (2009), providing additional capacity for TV services in the same amount of radio spectrum. The techniques used for digitally encoding video have also improved over time from MPEG-2 (1996) to MPEG-4 (1999) to the latest standard HEVC (2013), each improvement using a smaller proportion of the available capacity for each video stream. These changes permit the introduction of TV broadcast channels in HD using the same amount of spectrum which used to be required for SD. Other improvements in picture quality such as the introduction of 4K (also referred to as ultra-high definition 'UHD'), could also be introduced on a DTTV platform but would reduce the number of video services available due to their need for higher bandwidth services<sup>34</sup>.

The increase in the available radio spectrum channels for the provision of DTTV services coupled with the availability of more advanced DTTV technologies (higher quality digital encoding and transmission formats) allows for enhanced capacity, spectrum efficiency and quality of end-user experience in the transmission of TV broadcast channels over this TV platform. To date, no undertaking has expressed interest in the rights of use of radio spectrum for the operation of a commercial DTTV network post February 2023.

The subscriptions, by pay-TV distribution platform, between 2016 and 2021 are reflected in Appendix 1.

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<sup>33</sup> [Decision \(EU\) 2017/899](#) provides priority to broadcasting and PMSE usage until at least end 2030.

<sup>34</sup> Refer to [Study: the use of the sub-700 MHz UHF band for TV broadcasting and events | Shaping Europe's digital future \(europa.eu\)](#). The study analyses and assesses developments and trends in the use of the sub-700 MHz band, reserved in the EU for use by television to broadcast content to the homes of their customers, as well as for wireless audio equipment used to support broadcasting and coverage of news and events such as concerts and sports events.

### 3 Assessment of 'Must Carry' Obligations

'Must carry' obligations safeguard the transmission of the GI TV broadcast channels, and related complementary services, on all prevalent commercial TV distribution platforms. At the same time, they aim for equitability in network capacity required for the transmission of the GI TV broadcast channels.

When mandating reasonable 'must carry' obligations for the transmission of the GI TV broadcast channels, and related complementary services, on undertakings providing electronic communications networks and services used for distribution of TV broadcast channels to the public, an undertaking is required to:

- reserve part of its network capacity for the transmission of the GI TV broadcast channels; and
- transmit complementary services alongside the GI TV broadcast channels, in particular accessibility services to enable appropriate access for end-users with disabilities, and data supporting connected television services and EPGs.

#### 3.1 Network capacity and technical parameters

An undertaking of a TV platform subject to 'must carry' obligations is required to carry the identified GI TV broadcast channels on its TV platform, as indicated by the MCA. This entails that the undertaking, providing an electronic communications network and service used for the distribution of TV broadcast channels to the public, makes available part of its network capacity for the transmission of the GI TV broadcast channels and related complementary services (see section 3.2 below), to its end-users.

The technical terms by which the GI TV broadcast channels are to be transmitted rest with the undertaking of the TV platform. The audio-visual quality of the GI TV broadcast channel, however, impacts the end-users' viewing experience.

Today HD is the *de facto* standard video-resolution format used in most TV broadcasts.<sup>35</sup> HD has become mainstream for viewing TV broadcast channels and TV-like content. Video-resolution formats higher than HD, such as 4K, are presently not mainstream and TV content is limited, and found mainly on streaming apps (such as Netflix, Amazon Prime and YouTube). The quality of the display of content on steaming apps may vary from device to device, and may be affected by a variety of factors, such as, the bandwidth available and/or speed of the internet connection.

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<sup>35</sup> HD video is video of higher resolution and quality than SD.

The percentage of households owning an HD-enabled TV has increased from 67% at the end of 2015 to 92% by the second quarter of 2020.<sup>36</sup> The number of channels available in HD on GO's IPTV platform and Melita's Cable TV platform has continued to increase since the last 'must carry' review carried out in 2016. In fact, local TV broadcast channels available in HD are carried by both these pay-TV platforms in HD. In addition, TV viewers have become well accustomed with HD content available on both these TV platforms, and the various OTT services.

When 'must carry' obligations are mandated on an undertaking operating in Malta providing a TV platform, the undertaking of the TV platform is required to:

1. reserve sufficient network capacity for the transmission of the identified GI TV broadcast channels and the related complementary services (see Section 3.2 below);
2. ensure that the audio-visual quality of the GI TV broadcast channel is retained at the same level of quality provided by the GI TV broadcaster to the undertaking; provided that 'must carry' obligations shall not extend to TV broadcasts in a video-resolution format higher than HD; and
3. transmit the GI TV broadcast channel *tale quale*, as provided by the GI TV broadcaster, and shall in no way alter the format and content of the transmission.

It is noted that points (2) and (3) above shall not preclude the undertaking of a pay-TV platform from concluding commercial agreements with a broadcaster for:

- a) the carriage of GI broadcast channels in resolution formats higher than HD; and
- b) the modification of the format and content of the transmission, including upscaling or downscaling the resolution format of the GI TV broadcast channel.

Such commercial agreements shall not be construed or interpreted as forming part of the 'must carry' obligations.

## 3.2 Complementary services

'Must carry' obligations can include "complementary services", particularly services designed to improve accessibility for end-users with disabilities (such as videotext, subtitling for end-users who are deaf or hard of hearing, audio description, spoken subtitles and sign language interpretation) and the transmission of programme-related data necessary to support connected television services and EPG functionalities.

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<sup>36</sup> [Press release](#), MCA Perception Survey re Pay-TV services published November 2020.

When mandating 'must carry' obligations on an undertaking of a TV platform, the undertaking of the TV platform is required to transmit alongside the respective GI TV broadcast channel:

- programme-related data to support connected television services and EPGs (i.e., information about the programme content and how to access it), where applicable; and
- those accessibility services, as defined by the BA from time to time and applicable to the GI TV broadcast channels.



## 4 Assessment of 'Must Carry' Designations

Undertakings of certain electronic communications networks and services used for the distribution of TV broadcast channels to the public, that are used by a significant number of end-users as their principal means to receive TV broadcasts, may be subject to 'must carry' obligations.

At present 'must carry' obligations are mandated on Melita's Cable TV platform and GO's IPTV platform. As already mentioned, GO's DTTV platform is exempted from 'must carry' obligations on the grounds of spectrum efficiency and the equipment supplied by GO to its end-users allow them to receive the 'free-to-air' GI TV broadcast channels, transmitted in unencrypted format on a separate multiplex from that of GO's DTTV platform. GO has expressed its intent to cease operating its DTTV platform after the expiry of its licence at the end of February 2023.

This section reviews and assesses the undertakings of TV platforms subject to 'must carry' obligations.

### 4.1 TV platforms used by a significant number of end-users

When determining which TV platforms are used by a significant number of end-users to receive television broadcast channels, the MCA considers the state of technological and market development, market structure, as well as target markets.

Must-carry obligations may apply to any TV platform to the extent that a significant number of end-users, as determined by the MCA, use such TV platforms as their principal means to receive radio and television broadcasts.

Market structure indicates which TV platforms are used by a significant number of end-users as well as the market shares enjoyed by each TV platform. The state of developments also distinguishes between traditional and new/innovative ways of viewing TV broadcasting channels so as not to create a disproportionate requirement on new entrants and on the development of new and innovative TV services.

Melita's digital Cable TV platform launched in 2005 continues to enjoy a significant market share which is estimated to stand at 61.5% of all pay-TV subscribers at the end of the second quarter of 2022 (equivalent to 108,389 subscriptions). GO's IPTV platform launched in 2011 continues to command a significant market share, estimated at 37% (equivalent to 66,666 subscriptions) of all pay-TV subscribers at the end of the second quarter of 2022.

Based on the number of end-users subscribed to Melita's Cable TV platform and GO's IPTV platform, it is evident that these two prevalent pay-TV platforms continue to be used by a significant number of end-users to watch TV broadcast channels.

## 4.2 TV platforms used as the principal means to receive TV broadcasts

When determining which TV platforms are used as the principal means to receive TV broadcast channels, the MCA takes into account, *inter alia*, the number of end-users with connections to two or more TV platforms.

A survey conducted by the MCA between November 2019 and April 2020<sup>37</sup> showed that 96% of households are subscribed to a local pay-TV platform (GO / Melita). The survey also showed that only 1% of households were connected to two or more TV platforms.<sup>38</sup>

The [BA June 2022 Audience Survey Report](#) showed that 92.5% of TV viewers use 'Paid Subscription (Melita/GO)' as one of the reception services for watching TV.<sup>39</sup>

A survey on the use of fixed broadband internet access services conducted by the MCA between June and August 2022 showed that 98% of households were subscribed to a single fixed-broadband connection.<sup>40</sup>

Pay-TV platform services provided by Melita and GO are mainly purchased in a bundle setting. At the end of 2021, 82,231 pay-TV subscriptions formed part of a triple-play bundle (fixed-telephony, fixed broadband, pay-TV) and 57,973 pay-TV subscriptions formed part of a quad-play bundle (fixed telephony, mobile telephony, fixed broadband and, pay-TV)<sup>41</sup>.

Based on the above, it can be determined that the two prevalent pay-TV platforms - Melita's Digital Cable TV platform and GO's IPTV platform - are used by their respective end-users as the main means to receive TV broadcast channels.<sup>42</sup>

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<sup>37</sup> 2020 Consumer Perception Survey – [Findings of Pay-TV Services](#).

<sup>38</sup> This is 4.5 percentage points less than a similar survey carried out in 2015 and which was reported in the preceding 'must carry' review.

<sup>39</sup> 92.5% (1739 respondents) of all 1881 TV viewers, use 'Paid Subscription (Melita/GO)' as one of the reception services for watching TV. This is the most used reception service for watching TV across all age groups.

<sup>40</sup> <https://www.mca.org.mt/articles/consumer-perceptions-survey-fixed-broadband-2022>

<sup>41</sup> Refer to [MCA's Annual Report and Financial Statements 2021](#) (page 38).

<sup>42</sup> The principal means to receive TV broadcast channels refers to the main means used to watch broadcast content on a TV.

### 4.3 Principle of reasonableness

Where 'must carry' obligations place an excessive or undue burden on the undertaking of a particular TV platform the MCA, where it deems appropriate, considers alternative measures for the GI TV broadcast channels to be available seamlessly to all end-users provided that no undue burdens are placed on end-users.

When mandating 'must carry' obligations the MCA considers, among others, whether the imposition of 'must carry' obligations would entail an excessive or undue burden on the undertaking of a TV platform used by a significant number of end-users, as determined by the MCA, as their principal means to receive TV broadcasts.

If 'must carry' obligations place an excessive or undue burden on the undertaking of a particular pay-TV platform, the MCA, where it deems appropriate, would consider proposals on the part of an undertaking for alternative ways of conveying the GI TV broadcast channels to their end-users. When considering any such requests the MCA is guided by the need to ensure that the GI TV broadcast channels will be seamlessly available to all end-users of that particular pay-TV platform with no undue burdens placed on end-users. For example, the MCA does not mandate 'must carry' obligations on GO's DTTV platform given that viewers can receive *free-to-air* GI TV broadcast channels over the same DTTV set-top box.

GO and Melita both provide nationwide high-speed broadband internet access services. The increased network capacity and extensive bandwidth provided by their high-speed electronic communications networks and services decreases the burden to carry the GI TV broadcast channels, in addition to other commercial TV channels, on their TV platforms, even if carried in HD, in relation to just a few years ago. There is also an increase in the likelihood that a pay-TV platform would include the GI TV broadcast channels without the necessity for mandating 'must carry' obligations, because they will be motivated to fill up the additional capacity and available bandwidth with quality content. In fact, GI TV broadcast channels, when made available in HD, are today transmitted in HD on Melita's Cable TV platform and GO's IPTV platform.

From the channel line-up of both Melita's Cable TV platform and GO's IPTV platform, it is evident that HD is becoming the mainstream video resolution format for the transmission of TV broadcast channels, offering enhanced quality when compared to the SD video resolution format. In the context that both undertakings offer high-speed electronic communications networks and services used for the distribution of TV broadcast channels to the public, coupled with an extensive line-up of TV broadcast channels, including a good number of local and foreign channels in HD, it can be concluded that both Melita's Cable TV platform and GO's IPTV TV platform have sufficient capacity to accommodate the identified GI TV broadcast channels in HD, with no undue or excessive burden.

Backed by developments in digital technology and the end-users' expectations to have access to quality GI TV broadcast content received in HD it is within the limits of reasonableness that HD should be the standard video-resolution format for the transmission of GI TV broadcast channels. The transmission of a GI TV broadcast channel in a resolution format higher than HD is not subject to 'must carry' obligations. This ensures that the transmission of the GI TV broadcast channels reflects the mainstream video resolution format for viewing TV broadcast channels.

The requirement to transmit GI TV broadcast channels in HD (when made available by the GI broadcaster to the undertaking of the TV platform) cannot be considered to place an excessive or undue burden on GO's IPTV platform and on Melita's cable TV platform. At the same time, it is recognised that the transmission of GI TV broadcast channels in HD can increase the attractiveness of the undertakings TV packages given the high popularity of public broadcasting and local private TV broadcast channels, albeit to varying degrees.

Mandating 'must carry' obligations on Melita's Cable TV platform and on GO's IPTV platform, from a network capacity perspective, does not constitute any excessive or undue burden on the undertakings of these two pay-TV platforms.

## **4.4 Remuneration**

There is no obligation on the MCA to ensure remuneration for undertakings in return for 'must carry' obligations.

The pay-TV platforms operate models in which end-users pay a subscription to have a connection and for the equipment to be installed and to receive a bundle of TV broadcast channels, the value of which therefore depends on the broadcast content available to end-users. The undertakings of pay-TV platforms have a direct relationship with their subscribers. Subscribers are charged for receiving the GI TV channels, normally packaged with other local and foreign TV channels.

Whilst acknowledging that 'must carry' obligations may place a cost burden on the undertaking, the MCA cannot ignore the fact that the undertakings of pay-TV platforms recover costs through subscription fees associated with the transmission of the GI TV broadcast channels.

As concluded by the MCA in its previous 'must carry' designations, it would be disproportionate for undertakings of pay-TV platforms, subject to 'must carry' obligations, to be remunerated by GI TV broadcasters for the transmission of the of the GI TV broadcast channels. This argument still holds and remains relevant even for the transmission of GI TV broadcast channels in a video-resolution format not higher than HD.

## 5 Proposed Way Forward

The MCA has concluded that 'must carry' obligations mandated on Melita's Cable TV platform and GO's IPTV platform continue to be necessary to safeguard the carriage of the identified GI TV broadcast channels. These two pay-TV platforms continue to be used by a significant number of end-users as their principal means to receive TV broadcasts.

'Must carry' obligations should continue to apply to the undertakings of these two pay-TV platforms. 'Must carry' obligations on the undertakings of these two platforms will ensure that TV viewers subscribed to these two pay-TV platforms continue to have access to all the GI TV broadcast channels, irrespective of any packages offered on these TV platforms.

As part of the 'must carry' obligations, the undertakings of these TV platforms are required to:

1. reserve sufficient network capacity for the transmission of the identified GI TV broadcast channels and the related complementary services;
2. ensure that the audio-visual quality of the GI TV broadcast channel is retained at the same level of quality provided by the GI TV broadcaster to the undertaking; provided that 'must carry' obligations shall not extend to TV broadcasts in a video-resolution format higher than HD; and
3. transmit the GI TV broadcast channel *à la carte*, as provided by the GI TV broadcaster, and shall in no way alter the format and content of the transmission.

OTT streaming services are presently not considered as being mainstream and therefore do not necessitate the mandating of 'must carry' obligations. However, for those services that are offered as a bundle, that is, a hybrid package consisting of a mix of a managed TV platform (such as IPTV and Cable TV) and OTT streaming services over the public internet, it is premised that the relevant platforms are neutral in terms of what TV content is offered over them. Thus, it is expected that, unless otherwise justified, the viewer experience regarding TV content should be seamless, whether over a managed TV platform or viewed via an OTT TV platform over the open internet, given that the product is offered in a bundle. The matter is not one that is currently governed by 'must carry' requirements. However, from a product-consistency perspective, it is expected that irrespective of what platform the viewer is using to receive TV content, all GI TV programming is made available to the end-user.

The availability of audio-visual content made available over the open internet and accessible via a variety of internet-connected devices, for both linear and video-on-demand channels, is expected to increase over the coming years, along with the uptake of ultra-fast broadband internet access services. Viewers will increasingly use OTT services on smart TVs and other internet-connected devices to view TV content. At the same time, the mission of GI TV

broadcasters to reach their audiences is increasingly extending into the online world and includes both linear and non-linear audio-visual services.

The MCA will continue to monitor technological and market developments taking place in the audio-visual sector to ensure that 'must carry' obligations mandated on Melita's Cable TV platform and GO's IPTV platform continue to be proportionate to the objectives to be achieved.

The MCA will also monitor the developments taking place regarding the streaming of TV broadcast channels by broadcasters (such as via their websites and/or Apps), and the uptake of OTT services by consumers to watch TV programmes. If necessary, the MCA may consider making recommendations to Government to safeguard access to GI TV broadcast channels by operators of OTT platforms, should such services become the main means for consumers to view TV content.

In line with the Regulations 'must carry' obligations mandated on an undertaking of a pay-TV platform must be reviewed every five years. The MCA reserves the right to review 'must carry' obligations on an undertaking before the end of a five-year period should developments in technology and/or the market take place to the extent that they would warrant an earlier review.

## 6 Request for Comments

The MCA would like to seek the views and comments from interested parties on the review of 'must carry' obligations and the MCA's proposal to maintain 'must carry' obligations on Melita's Cable TV platform and GO's IPTV platform.

Respondents should clearly link each view or comment to the relevant section. Any proposed amendments or revisions should be clearly explained and supported by respondents. Supporting material may be placed in an annex.

All views and comments should be submitted in writing in electronic format (such as Microsoft Word or PDF Format). Respondents are required to include their personal or company particulars, correspondence address, contact number and email address in their submissions.

The MCA appreciates that respondents may provide confidential information in their feedback to this consultation document. This information is to be included in a separate annex and should be clearly marked as confidential. Respondents are also requested to state the reasons why the information should be treated as confidential.

The MCA will take the necessary steps to protect the confidentiality of all such material as soon as it is received at the MCA offices in accordance with the MCA's confidentiality guidelines and procedures.<sup>43</sup> Respondents are, however, encouraged to avoid confidential markings wherever possible. For the sake of openness and transparency, the MCA will publish a list of all respondents to this consultation.

All responses to this consultation should be clearly marked "**Review of 'Must Carry' Obligations**" and sent, by not later than **18 January 2023** to the:

**Senior Manager, Policy and Strategy**  
**Malta Communications Authority**  
**Valletta Waterfront**  
**Floriana FRN1913**  
**Malta**

**Email:**

[damian.gatt@mca.org.mt](mailto:damian.gatt@mca.org.mt)

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<sup>43</sup> In accordance with the MCA's confidentiality guidelines and procedures:

[http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL\\_0.pdf](http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf)

## Appendix 1: Subscriptions of pay-TV platforms (2016 - 2022)

Pay-TV Platforms - Subscriptions							
	2016	2017	2018	2019	2020	2021	End Q2/2022
<b>Melita<sup>44</sup></b>							
Analogue Cable	5,399 (4%)	1456 (1%)	-	-	-	-	-
Digital Cable	71,213 (48%)	84,388 (54%)	95,523 (58%)	101,265 (59%)	105,042 (61%)	108,389 (61.5%)	110,431 (61.6%)
<b>GO</b>							
DTTV	45,640 (31%)	34,181 (22%)	21,999 (13%)	14,686 (9%)	6,953 (4%)	2,713 (1.5%)	2,098 (1.2%)
IPTV	25,504 (17%)	35,651 (23%)	47,767 (29%)	54,716 (32%)	60,528 (35%)	65,123 (37.0%)	66,666 (37%)
<b>Total</b>	<b>147,756</b>	<b>155,676</b>	<b>165,289</b>	<b>170,667</b>	<b>172,532</b>	<b>176,225</b>	<b>179,195<sup>45</sup></b>

Source: [MCA Data Report Sheets](#)

<sup>44</sup> As at the end Q2/2022 Melita had 1,523 end-users subscribed to Melita NexTV by itself (as part of Melita's Flexi Bundle). Melita NexTV App can be downloaded directly on to a smart TV (Android TV, Apple TV and Firestick).

<sup>45</sup> Around 92% of subscribers are residential end-users of pay-TV services. 8% are classified as business users.





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