

**A POSTAL AUTHORISATION FEE
STRUCTURE FOR A FULLY LIBERALISED
MARKET ENVIRONMENT**

Consultation Document

MCA/C/13-1704

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EXECUTIVE SUMMARY

The postal services sector in Malta was fully liberalised on the 1st of January of this year, in line with the mandate set by the third EU Postal Directive. Prior to full market opening of the postal market, a number of initiatives leading to an effective regulatory approach suitable to a fully liberalised market environment, were proposed by the Malta Communications Authority (MCA), followed by the adoption of these proposals by Government.

A regulatory framework that strikes a balance between ensuring fair and effective competition, on the one hand, and safeguarding the provision of the universal service on the other, is now in place. In addition, an authorisation framework, as well as a set of administrative charging principles reflective of a fully liberalised postal services market environment have also been put in place.

An effective authorisation framework needs to be complemented by an adequate authorisation fee structure, conforming to the administrative charging principles. The MCA noted that it would, in 2013, carry out a review of the existing authorisation fee structure to be in line with the established administrative charging principles and propose a course of action to Government accordingly.

The rationale underpinning the need to review the existing authorisation fee structure is that it currently differentiates between the incumbent designated universal service provider, MaltaPost Plc, and other postal operators providing services within the scope of the universal service. Furthermore, the authorisation fees collected from postal operators should, as far as practicable, cover the expenses properly incurred by the MCA in the discharge of its functions relating to the regulation of postal services.

In line with the established administrative charging principles, authorisation fees payable by postal operators, are to be: objectively justifiable, transparent, proportionate to the level of regulatory activity and, as far as practicable, sufficient to meet the MCA's expenditure in carrying out its functions relating to the regulation of postal services.

Proposed authorisation fee structure

The MCA is proposing to revise the current authorisation fee structure as follows:

- Postal operators licensed to provide postal services within the scope of the universal service are required to pay on an annual basis:
 - 1.5% of the total gross revenue from postal services within the scope of the universal service, or €5,000, whichever is the higher.
- Postal operators authorised by way of a general authorisation to provide only postal services which are outside the scope of the universal service are required to continue to pay on an annual basis:

- €150, provided that a postal operator whose annual gross revenue does not exceed €24,300 would be exempt from the payment of such a fee.

The MCA is proposing that the authorisation fee structure will come into effect as from the 1st of January 2014.

Consultation Process

By way of this consultation, the MCA is seeking views from interested parties on the postal authorisation fee structure proposed in this document.

The consultation period will run from the **16th September 2013** until the **14th October 2013**. Please refer to **Section 5** for further details about the submission of comments.

Next Steps

The MCA will, taking into consideration the responses received to this consultation, propose to the Minister responsible for postal matters, changes to the current authorisation fee structure, as specified in the Postal Services (General) Regulations (SL 254.01).

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	LEGAL BASIS	4
3.0	AUTHORISATION FEE STRUCTURE - CONSULTATION ISSUES.....	6
3.1	Fees proportionate to the level of regulatory activity	6
3.2	Fees sufficient to meet the MCA’s expenditure.....	7
4.0	PROPOSED AUTHORISATION FEE STRUCTURE	10
5.0	REQUEST FOR COMMENTS AND NEXT STEPS.....	11

LEGAL DISCLAIMER

This consultation paper is not a binding legal document and does not contain legal, commercial, financial, technical, or other advice. The MCA is not bound by it, nor does it necessarily set out the MCA’s final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the MCA. Inappropriate reliance ought not therefore to be placed on the contents of this document.

None of the material in this document should be taken to reflect the views of the Ministry for the Economy, Investment and Small Business or to represent official Government policy, unless it is explicitly stated otherwise. This document is without prejudice to the legal position or rights and duties of the MCA to regulate the market generally.

1.0 INTRODUCTION

The MCA's primary objective with regard to the regulation of the postal sector is to safeguard the provision of an efficient, affordable and high quality universal service, together with the promotion of fair market conditions, conducive to effective competition between postal operators.

In line with the third EU Postal Directive,¹ full market opening of the postal services market in Malta took place on the 1st of January of this year, when the area reserved to MaltaPost Plc (hereinafter referred to as MaltaPost), as the incumbent designated universal service provider (USP), was completely abolished. Prior to full market opening of the postal market, the MCA carried out a number of initiatives that eventually led to Government adopting a regulatory approach suitable to a fully liberalised market environment.

A regulatory framework that strikes a balance between ensuring fair and effective competition, on the one hand, and safeguarding the provision of the universal service on the other, is now in place. In line with this approach, a postal authorisation framework, as well as a set of administrative charging principles reflective of a fully liberalised postal services market environment, have also been put in place.

In line with the postal authorisation framework, an individual licence is required to provide postal services within the scope of the universal service,² and a general authorisation is required to provide only postal services outside the scope of the universal service.³ However, as from the 1st of January 2013, all postal operators providing services within the scope of the universal service, including a designated USP, are issued with an identical individual licence. The designation of a postal operator as a USP, to provide all or part of the universal service,⁴ is now no longer a requirement in any individual postal operator's licence.

¹ Refer to the EU Postal Directive 2008/6/EC of 20th February 2008 with regard to the full accomplishment of the internal market of Community postal services:

http://ec.europa.eu/internal_market/post/doc/legislation/2008-06_en.pdf

² There are currently three postal operators licensed to provide postal services within the scope of the universal service - DHL International Limited, MaltaPost Plc (designated as a USP in line with the Postal Services Act) and Premiere Post Limited.

<http://www.mca.org.mt/authorisations-licensing/postal-authorisation-and-licensing>

³ Refer to Notification Form for the provision of postal services that fall outside the scope of the universal service:

<http://www.mca.org.mt/authorisations-licensing/postal-authorisation-and-licensing>

There are currently sixteen postal operators providing only services outside the scope of the universal service that have notified the MCA:

<http://www.mca.org.mt/authorisations-licensing/register-authorised-undertakings>

⁴ The universal service refers to the minimum set of postal services that must be available to all addresses in Malta - in terms of access to these services, quality and affordability. In a fully liberalised market environment, the universal service may be ensured by the reliance on market forces or the designation of a USP(s).

In a liberalised, potentially multi-player market, the obligation of the universal service provision can, hypothetically, fall on operators other than the traditional incumbent. By definition, an individual licence should not contain universal service obligations because these could eventually be removed and applied to other operators depending on objective circumstances. The universal service obligations thus cannot form an integral part of any postal operator's licence because they are not necessarily permanent to any particular operator. The distinct universal service provisions have now been removed from the MaltaPost licence for the provision of services within the scope of the universal service and are articulated in a separate designation document.⁵

An effective authorisation framework needs to be complemented by an adequate authorisation fee structure, conforming to the established administrative charging principles. Such administrative charging principles require that the authorisation fees payable by postal operators be:

- objectively justifiable;
- transparent;
- proportionate to the level of regulatory activity; and
- as far as practicable, sufficient to meet the Authority's expenditure in carrying out its functions relating to postal services.

The administrative charging principles aim to ensure a level playing field by safeguarding the principles of proportionality and equitability in the financing of the MCA's functions relating to the regulation of postal services.

The current authorisation fee structure (refer to **Table 1** overleaf) does not fully live up to the proportionality principle in a fully liberalised market environment, as it distinguishes between a designated USP and other postal operators providing services within the scope of the universal service.⁶ Furthermore, the authorisation fees collected from postal operators need to, as far as practicable, cover the expenses properly incurred by the MCA in the discharge of its functions relating to the regulation of postal services.

⁵ Refer to Postal Services (Designation of Universal Service Provider) Order (SL254.13):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9666&l=1>

⁶ Refer to Regulations 45, 46, 47 and the First Schedule of the Postal Services (General) Regulations:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

Also refer to the MCA's Directive 1 of 2005 on the modalities of payment of postal authorisation fees:

<http://www.mca.org.mt/sites/default/files/attachments/decisions/2012/directive-1-05-postal.pdf>

Table 1: Current Authorisation Fee Structure

Provision of Postal Services	Fees payable to the MCA on an annual basis
Postal operators licensed to provide postal services within the scope of the universal service ⁷	Designated USP⁸ €58,230 + 0.75% of the total gross revenue from postal services within the scope of the universal service
	Non-Designated USP operators €930 + 1% of the total gross revenue from postal services within the scope of the universal service
Postal operators authorised to provide only services which are outside the scope of the universal service	€150, provided that an operator whose annual gross revenue does not exceed €24,300 would be exempt from the payment of such a fee

An equitable postal authorisation fee structure would need to factor in the above-mentioned administrative charging principles.

This consultation document sets out the MCA's views on the proposed authorisation fee structure that would determine the annual postal administrative fees, payable by postal operators, in a fully liberalised market environment.

⁷ Postal operators licensed to provide postal services within the scope of the universal service are also authorised to provide postal services outside the scope of the universal service.

⁸ As outlined in the First Schedule of the Postal Services (General) Regulations, up to 31st of May 2003, MaltaPost, as the incumbent designated USP, was charged an annual fee of €465,870. From the 1st of June 2003 to the 30th of April 2004 MaltaPost was charged an annual fee of €232,935 + 0.5% of the total gross revenue. From the 1st of May 2004 to the 31st December 2005 MaltaPost was charged an annual fee of €174,700 + 0.5% of the total gross revenue from postal services within the scope of the universal service.

2.0 LEGAL BASIS

Arising from the Postal Services Act (Cap 254),⁹ the MCA's functions in relation to the regulation of postal services are to:

- ensure the provision of a universal service that meets the reasonable needs of postal service users; and to
- monitor and ensure compliance by postal operators with the obligations imposed on them by or under the Postal Services Act.

The statutory provisions relating to the administrative fees required to cover the costs of the MCA, incurred in the performance of its functions relating to the regulation of postal services, are found in the following Acts:

- Article 14 of the Malta Communications Authority Act (Cap 418)¹⁰ requires the MCA to levy all administrative fees, rates and other payments prescribed under any law that the MCA enforces in order to, as far as practicable, meet its expenditure out of its revenue.
- Article 8 (2) (b) (iii) of the Postal Services Act establishes that, inter alia, the granting of authorisations may, in all cases including of universal service providers, where appropriate, be subject to an obligation to make a financial contribution to the Authority's operational costs.
- Article 8 (3) of the Postal Services Act establishes that, inter alia, an individual licence may include conditions requiring the payment to the Authority of a fee on the grant of the individual licence or of payments during the currency of the individual licence or both. Fees or payments shall be of such amounts (which may also be determined by reference to the licensee's income, sale or turnover) as may be determined in the individual licence.
- Article 81 (2) of the Postal Services Act allows the Minister, after consultation with the Authority, to make regulations, inter alia, for any matters in respect of authorisations under this Act, including the establishment of fees.
- The First Schedule of the Postal Services (General) Regulations (254.01) refers to the fees to be payable on an annual basis by postal operators licensed to provide services within the

⁹ Refer to the Postal Services Act (Cap 254):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1><http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>

¹⁰ Refer to the Malta Communications Authority Act (Cap 418):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8884&l=1>

scope of the universal service in line with regulations 45 and 46, and operators authorised to provide services outside the scope of the universal service in line with regulation 47.¹¹

In addition, the third EU Postal Directive 2008/6/7 (Recital 47) notes that the relevant national regulatory authorities (NRAs) should be provided with all necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.

¹¹ Refer to Postal Services (General) Regulations (Cap 254.01):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

3.0 AUTHORISATION FEE STRUCTURE - CONSULTATION ISSUES

This section sets out the MCA's views on the proposed authorisation fee structure that would determine the annual administrative fees payable by postal operators in a fully liberalised market environment.

3.1 FEES PROPORTIONATE TO THE LEVEL OF REGULATORY ACTIVITY

The MCA is proposing to retain the current authorisation fee structure for postal operators authorised, by way of a general authorisation, to provide only postal services which fall outside the scope of the universal service. Postal operators providing only services outside the scope of the universal service are required to notify the MCA of their intention to start offering commercial services. Such postal operators are, in the main, only required to provide assurance as to their adherence to the essential requirements,¹² complaint handling, and the submission of required statistical data. The resultant regulatory burden on the MCA is not significant and the fee structure reflects this state of affairs.

The regulatory functions in respect of postal services that fall within the scope of the universal service¹³ require significantly more resources than the more limited functions relating to those services that fall outside the scope of the universal service. This sizeable increment in regulatory activity stems from the Postal Services Act, which places additional obligations on postal operators providing services that are within the scope of the universal service, in relation to operators providing postal services that are outside the scope of the universal service.

In a fully liberalised postal services market, an authorisation fee structure applicable to postal operators providing services within the scope of the universal service, including a designated USP, should be consistent across all such postal operators. In addition, it should continue to reflect the significantly higher costs of regulating postal services that fall within the scope of the universal service, as compared to the light-touch regime that is required for postal services that fall outside the scope of the universal service.

The MCA is of the view that, like the existing authorisation fee structure for the provision of postal services within the scope of the universal service, the proposed authorisation fee structure should be based on a percentage of applicable turnover subject to a minimum charge. However, instead of the current two different algorithms, there should be only one, in line with the principles highlighted above. A turnover-based approach is in keeping with the provisions of the Postal Services Act,

¹² Refers to the non-economic reasons which the MCA can impose on the supply of postal services. These reasons, amongst others, include the confidentiality of correspondence and the security of network a regards transport of dangerous goods.

¹³ Services within the scope of the universal service refer to those postal services whose provision is ensured by the Postal Services Act and other postal services which could reasonably be said to be inter-changeable from a user's perspective. Refer to MCA Decision Notice on the Regulatory Direction of Specific Aspects of the Universal Service (25th March 2011) and the EU Postal Directive 2008/6/EC, Recital 17.

namely Article 8(3), which states that an individual licence may include conditions requiring the payment to the MCA of a fee, which fee shall be of such amounts which may also be determined by reference to the licensee's income, sales or turnover.

In order to maintain consistency in the regulation of postal services within the scope of the universal service, including services provided by a designated USP, the same percentage of applicable turnover should be applied across all licensed postal operators. This will ensure equitable application of authorisation fees across all postal operators providing services within the scope of the universal service, whilst also ensuring that operators with higher turnovers pay more towards the cost of regulation.

It is recognised that with a uniform turnover based authorisation fee structure, as competition emerges, any possible volume transfers from the incumbent designated USP to other postal operators would result in the latter paying more authorisation fees as their relevant turnover increases. Meanwhile, the opposite would apply for the incumbent should turnovers drop. Therefore, all licensed postal operators, would contribute an authorisation fee at a proportionate rate, which represents the level of regulation in each case.

It is reasonable to assume that postal service providers with a larger turnover and client base are likely to have a greater number of regulatory issues that need to be addressed by the MCA. Therefore, an authorisation fee structure based only on a fixed charge, whilst being easier to implement, would not be consistent with the established administrative charging principles. Such an authorisation fee structure would result in highly disproportionate charging to new and smaller postal operators offering postal services within the scope of the universal service.

Nevertheless, an element of fixed cost in managing all operators within the scope of the universal service will subsist, irrespective of turnover. Thus it is envisaged that a fixed fee will also be required in the interest of equitability. This fixed fee will reflect the element of administration on the part of the NRA that is necessary in exercising its regulatory function with respect to all individual operators irrespective of their size. The fixed fee to be levied will, however, be dimensioned in such manner as not to constitute a barrier to entry. At the same time it will ensure that there is an element of cost recovery for regulating postal services from all postal operators providing services within the scope of the universal service.

An authorisation fee structure for the provision of postal services within the scope of the universal service, based on the applicable percentage of turnover and a minimum fixed charge, is objective, transparent, proportionate and equitable.

3.2 FEES SUFFICIENT TO MEET THE MCA'S EXPENDITURE

The Malta Communications Authority Act states that the expenditure required for the proper performance of the MCA's functions shall, as far as practicable, be met out of its revenues. This objective is achieved through an arrangement of administrative charges levied on players operating within the respective communications sectors falling under the MCA's regulatory jurisdiction. In

addition, the Postal Services Act requires that postal operators should, where appropriate, be subject to an obligation to make a financial contribution to the MCA's operational costs.¹⁴

Regardless of Malta's size and population, the MCA still has to, by and large, carry out the same regulatory functions as other NRAs in larger EU Member States. The comparison with larger jurisdictions is obviously not linear, given that certain activities, such as registration and data collection are limited in relation to size and dispersion of the market. Nonetheless, there are a number of activities, in relation to oversight of the sector, in particular in monitoring the competitive situation and in ensuring adherence to universal service obligation requirements, that are equally time consuming as those undertaken by NRAs in larger jurisdictions. The MCA therefore requires appropriate staffing and expertise to carry out its postal regulatory functions. The MCA's postal regulation workload, which averages three to four persons - full time equivalent - working on postal regulation, is still considered low relative to other NRAs, despite the inherent diseconomies.

Specialised postal consultants, WIK-Consult, in a report to the European Commission,¹⁵ contend that NRAs require an appropriate level of staffing and expertise to carry out their basic regulatory functions - such as, accounting controls, price regulation, quality of service monitoring, administration of authorisations, oversight of access to and delivery of universal services, ensuring fair access to the postal infrastructure, collection of statistics. According to WIK-Consult, for all except the six largest national postal markets, the minimum annual budget needed for postal regulation was estimated to be, on average, about €1.2 million for a staff of about nine to ten persons - including qualified economic and legal professionals and support staff. In addition, effective regulation would very likely require a reasonable budget for studies by outside consultants and efficient application of analytical techniques developed by the largest NRAs. WIK-Consult argues that 'while a specific NRA might possibly do very well even with less than this level of resources, in general this appears to be a reasonable order-of-magnitude estimate of the minimum level of resources required to provide basic postal regulation in an average medium-sized or smaller state'.

The proviso made by the self-same report is that it is rather difficult to bring all NRA activities on the same plane. Nonetheless, it is felt that the broad figures quoted represent a fair representation of individual NRA requirements. The MCA is of the opinion that, with due credit given to the WIK-Consult report, it is still possible to synergize the disciplines used in telecoms and postal regulation in such manner as to be able to straddle across sectors with the same experts. Thus, while the MCA's equivalent number of full time persons devolved to the postal sector averages between three and four, the actual number of professional staff involved is significantly higher, and more or less equivalent to the nine to ten persons mentioned in the WIK-Consult report. The MCA therefore

¹⁴ This reflects Article 9 of the EU Postal Directive. Article 9 states that the granting of an authorisation may, where appropriate are made subject to an obligation to make a financial contribution to the NRA's operational costs. The Directive notes that the NRA's shall have as a particular task ensuring compliance with the obligations arising from the Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

¹⁵ WIK-Consult (2009). The Role of Regulators in a More Competitive Postal Market Study for the European Commission, Directorate General for Internal Market and Services, p272:

http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf

manages to counter diseconomies of scale by achieving economies of scope across the sectors regulated.

A performance audit carried out in November 2010, by the National Audit Office (NAO),¹⁶ on the regulation of the universal postal service, noted that the MCA has to prioritise its regulatory activities to keep its expenditure to a minimum due to its budgetary constraints. The NAO noted that the MCA's regulatory activities are financed by different mechanisms depending on the respective remits of the MCA in different sectors. With regard to the regulation of the postal sector, the NAO recommended 'that a more flexible financing mechanism should be established to ensure that sufficient resources are available for the different regulatory activities carried out by the MCA in the postal sector.'

Figures for the past three years indicate that the MCA's annual expenditure on postal sector regulation averages €250,000. The MCA is proposing an authorisation fee algorithm calibrated around the collection of this amount on an annual basis. The end result would be in conformity with the provisions of Article 14 of Malta Communications Authority Act.

Ideally, the proposed postal authorisation fee structure should ensure the right level of income for the MCA to be able to meet all of its expenses properly incurred in the discharge of its functions relating to the regulation of postal services. Revenues and expenditures may tend to change over time and the MCA recognises that a balancing of these may not always be entirely possible. Among others, the MCA is conscious of the fact that any decline in turnover applicable to the provision of postal services (such as due to the decline in postal letter mail volumes, amongst others, attributable to e-substitution) could impact the amount of fees collected for the MCA to be able to carry out its regulatory functions with the required efficiency. Such a decline may, however, be countered by concomitant increases in turnover from other areas such as eCommerce-based trade. Thus, it is difficult to predict any future variations in sector turnover. The MCA will monitor the situation on an ongoing basis and review matters should consistent variations emerge over time.

¹⁶ Refer to the NAO report (Section 17 of the Executive Summary and Section 1.3.11 of Chapter 1 on financing the regulation of universal service) entitled 'Malta Communications Authority – Regulation of the Universal Postal Service', dated November 2010:

<http://www.nao.gov.mt/loadfile.ashx?id=16ec4951-12ef-4b7b-a7d4-d2059f40462b>

4.0 PROPOSED AUTHORISATION FEE STRUCTURE

In view of the above considerations, taking into account the likely cost of postal regulation, which will continue to be incurred by the MCA, and the estimated applicable turnover from postal operators within the scope of universal service, the MCA is proposing an authorisation fee structure as follows:

- The authorisation fees levied on postal operators will be used for the purpose of meeting the expenses incurred by the MCA in carrying out its tasks in respect of the regulation of postal services.
- Postal operators licensed to provide postal services within the scope of the universal service are required to pay on an annual basis:
 - 1.5% of the total gross revenue from postal services within the scope of the universal service,¹⁷ or €5,000, whichever is the higher.
- Postal operators authorised by way of a general authorisation to provide only postal services which are outside the scope of the universal service are required to continue to pay on an annual basis:
 - €150, provided that an operator whose annual gross revenue does not exceed €24,300 would be exempt from the payment of such a fee.

The MCA will, in the absence of adequate or tangible turnover figures, turn to an alternative parameter so as to assess the amount of fees to be paid by the operator in question. Any such alternative measure will be applied in line with principles of proportionality and reasonableness.

The MCA proposes that the new authorisation fee structure should come into effect on the 1st of January 2014.

The MCA intends to review the postal authorisation fee structure every three years subject to there being no significant changes to operator turnovers or in the MCA's costs incurred to effectively regulate the provision of postal services. Based on this review the MCA will assess whether there is the need to make recommendations to Government on any adjustments required to the postal authorisation fees.

¹⁷ The proposed percentage of turnover is in line with that charged to electronic communications providers, despite the relative diseconomies of scale that result in the case of postal sector regulation.

5.0 REQUEST FOR COMMENTS AND NEXT STEPS

The MCA would like to seek the views and comments from interested parties on the proposed authorisation fee structure put forward in this consultation document.

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 will make public all or parts of any submissions made in response to this consultation and disclose the identity of the source. Respondents are required to clearly mark any part of the submission that is considered commercially sensitive and place the information separately as an annex to the submission.¹⁸ The MCA will not disclose information identified as commercially sensitive or confidential but will take them into consideration in its review.

The MCA will, taking into consideration the responses received to this consultation, propose to the Minister responsible for postal matters, changes to the current authorisation fee structure specified in the Postal Services (General) Regulations (SL 254.01).

The consultation period will run until close of business of **14th October 2013**.

Comments should be sent to:

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¹⁸ In accordance with the MCA's confidentiality guidelines and procedures:

http://www.mca.org.mt/sites/default/files/articles/confidentialityguidelinesFINAL_0.pdf