



## **Ensuring Universal Access to TV Channels qualified as meeting General Interest Objectives**

### **A review of must-carry obligations**

#### **Consultation Paper**

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## Executive Summary

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Must-carry obligations require operators of certain radio and TV broadcast networks to reserve part of their network capacity for the transmission of radio and TV channels qualifying as meeting general interest objectives. This consultation paper is limited to TV broadcast networks, as the concept of general interest objectives does not currently apply to radio.

Until recently, operators of all commercial TV broadcasts networks – namely cable and DTT – have been subjected to must-carry obligations under the relevant provision of the Broadcasting Act which, as a result of the recent amendments, no longer exists<sup>1</sup>. The recent amendments form part of the realisation of Government's *Policy and Strategy for Digital Broadcasting that meets General Interest Objectives* launched in February 2009. This review follows such policy and strategy and is carried out against a backdrop of changes in the market, technology, and regulatory environments.

The manner in which must-carry obligations may be imposed is defined in Regulation 49 of the Electronic Communications Networks and Services (General) Regulations, 2011. Under this regulation, must-carry obligations may be imposed:

1. for the transmission of TV broadcast channels and complementary services where they are necessary to meet clearly defined general interest objectives; and
2. on undertakings providing electronic communications networks used for the distribution of TV broadcast channels to the public where a significant number of end-users of such networks use them as the principal means to receive TV broadcasts.

General interest objectives define the public service remit of TV broadcasting, carried out in part by PBS, the national public service broadcaster, with the remaining part entrusted to private broadcasters. The private broadcasters are specified by the Broadcasting Authority following a process whereby broadcasters that are deemed to fulfil general interest objectives are selected and entitled to carriage on the general interest TV broadcast network on a free-to-air basis<sup>2</sup>.

With regards to the second point, the Malta Communications Authority ('the Authority') deems that the three prevalent TV broadcast networks – analogue and digital cable, and DTT – are all used by a significant number of end-users as the principal means to receive TV broadcasts. All such networks should technically be obliged to carry all six TV

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<sup>1</sup> Must-carry obligations are also defined in subsidiary legislation 399.24 - LN 167 of 2001, Cable Systems (General) Regulations. The Authority is however proposing amendments to these regulations, which could result in Regulations being repealed in their entirety.

<sup>2</sup> For more information, please refer to the *Consultation Document on the Eligibility Criteria for the Classification of Broadcasters that fulfil General Interest Objectives* published by the Broadcasting Authority. The document may be accessed from the Broadcasting Authority's web site, [www.ba-malta.org](http://www.ba-malta.org). <http://www.ba-malta.org/file.aspx?f=999> .

channels qualifying as meeting general interest objectives (GI TV channels); however, in the interest of spectrum efficiency, the obligations on the DTT operator will be lifted.

Accessibility services, as defined by the Broadcasting Authority from time to time and applicable to the GI broadcasters, are also to be carried alongside the respective GI TV channel.

Must-carry obligations will not be applicable to new and/or emerging TV broadcast networks until the Authority considers that such networks are used by a significant number of end-users as the principal means to receive TV broadcasts. When determining whether must-carry obligations are to be imposed on a TV broadcast network, proposals on the part of the operator for alternative ways to convey the GI TV channels to their end-users will be taken into consideration, provided that such proposals do not place undue burden on end-users.

The Authority plans to review must-carry obligations every three years.

Operators of TV broadcast networks as well as interested parties are welcome to submit comments in writing on any of the matters presented in this consultation document. The consultation period will run from the **1<sup>st</sup> September** through to the **29<sup>th</sup> September 2011**. Please refer to Chapter 4 for further details on how to submit comments.

## Definitions

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<i>GI TV channel</i>	A TV channel which has been identified by the Broadcasting Authority as qualifying to meet general interest objectives and thus entitled for carriage on the GI TV broadcast network.
<i>TV broadcast network</i>	An electronic communications network used for the distribution of television services.
<i>GI TV broadcast network</i>	The free-to-air DTT broadcast network managed by PBS Ltd and established for the sole purpose of carrying up to six GI TV channels, including the national TV channels TVM and Education 22.
<i>GI broadcaster</i>	An entity having editorial control over a GI TV channel.
<i>Operator</i>	An undertakings providing electronic communications networks used for the distribution of TV broadcasts channels.

## Disclaimer

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This consultation paper is not a binding legal document and does not contain legal, commercial, financial, technical, or other advice. The Authority is not bound by it, nor does it necessarily set out the Authority's final or definitive position on matters dealt with in the said consultation paper.

## 1 Background

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### 1.1 Policy Backdrop

Generally speaking, must-carry rules require specified radio or TV channels to be carried over certain radio and TV broadcast networks. The specified radio and TV channels typically enjoy must-carry status which is awarded when such channels qualify as meeting clearly defined general interest objectives ('GIOs'). Must-carry rules thus contain two aspects<sup>3</sup>:

- **must-carry status:** obligations concerning content, in particular the indication of channels which can enjoy the must-carry status; and
- **must-carry obligations:** obligations for operators of TV broadcast networks to reserve a part of their network capacity for the transmission of TV channels enjoying must-carry status.

This document is limited to TV broadcast networks, given that in Malta the concept of general interest objectives does not currently apply to radio<sup>4</sup>, and therefore concomitant must-carry obligations do not ensue in the case of radio broadcasting.

#### 1.1.1 Obligations concerning content

GIOs have to do with the promotion of cultural diversity, provision of educational programming, provision of objective information to shape public opinion, and the need to guarantee a pluralistic media offer. Quality broadcasts that address these objectives need to continue to be universally available in the face of a more competitive market, specifically through the guarantee of access to the airwaves and to TV broadcast networks. The role of public service broadcasting remains key to the attainment of these objectives.

These GIOs equate to a public service remit, which remit is carried out in part by PBS, the national public service broadcaster, through its two TV channels TVM and Education 22. The remaining part of the remit – that complementing the PBS programming – is entrusted to four private broadcasters<sup>5</sup> of TV channels whose content qualifies as meeting GIOs. These private TV channels have been identified by the Broadcasting Authority in terms with the Broadcasting Act<sup>6</sup>, and have been issued with a GI broadcast content licence accordingly. Unless specified otherwise, these broadcasters (public

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<sup>3</sup> The first aspect, that related to must-carry status, falls within the remit of the Broadcasting Authority which is the national regulatory authority responsible for content. The second aspect on must-carry obligations falls within the remit of the Malta Communications Authority, which is the national regulatory authority responsible for, *inter alia*, electronic communications networks and services.

<sup>4</sup> The reasons for non-applicability to radio are laid out in pages 15 and 16 of the Consultation document *Making Digital Broadcasting Accessible to All: A Policy and Strategy for Digital Broadcasting that meets General Interest Objectives* published in September 2007.

<sup>5</sup> Favourite Channel, Net TV, ONE, and Smash TV.

<sup>6</sup> See [www.ba-malta.org](http://www.ba-malta.org).

service and private) are collectively referred to in this document as general interest broadcasters, or GI broadcasters. Their respective general interest TV channels are referred to as GI TV channels<sup>7</sup>.

Access to the airwaves is granted to the GI broadcasters by virtue of their public service remit. Government appointed PBS as the network operator responsible for setting up, operating and managing the 'GI TV broadcast network' – a multiplex operating on a nationwide single-frequency network<sup>8</sup> that carries the six GI TV channels. This digital free-to-air network provides the necessary capacity for all six GI TV channels to be broadcast to all members of the public.

### **1.1.2 Must-carry obligations**

The most recent review of must-carry obligations emanates from a consultation that was carried out in 2007<sup>9</sup>. The consultation dealt with, amongst other things, the licensing and transmission of GI TV channels together with the associated must-carry obligations incumbent on operators, and articulated how the two aspects, that is GIOs and must-carry obligations, come together from both policy and implementation perspectives. The consultation led to the launch of Government's policy and strategy on broadcasting which meets GIOs in February 2009 ('the GIO Policy')<sup>10</sup>.

The GIO Policy marks the second and final phase in the transition from analogue terrestrial TV broadcasting to digital. The first phase, concluded in 2005, focussed on the introduction of pay-TV services over digital terrestrial television ('DTT'), with the intent of introducing digital TV services whilst at the same time instilling competition in the pay-TV market that was then dominated by analogue cable TV. The second phase concerns the transition from free-to-air analogue terrestrial TV broadcasting to digital, including the introduction of GI broadcast content licences as well as the selection and regulation of the GI TV channels<sup>11</sup>. This phase is commonly known as the digital switchover ('DSO'), and is almost completed.

With regards to must-carry, the GIO policy maintains that a must-carry obligation is to remain incumbent on the operator of analogue and digital cable TV broadcast networks. The same policy argues that must-carry obligations on operators of DTT broadcast networks are not necessary when the DSO is completed, citing inefficient use of spectrum as predominant grounds for this direction, since end-users of commercial DTT

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<sup>7</sup> The GI TV channels are: TVM, Education 22, Favourite Channel, Net TV, ONE, and Smash TV.

<sup>8</sup> The designated frequency is UHF Channel 66. The Authority issued the necessary spectrum licence for PBS to honour its obligation. Under the spectrum licence, PBS is to achieve and maintain national coverage.

<sup>9</sup> See *Making Digital Broadcasting Accessible to All - A Consultation Document relative to A Policy and Strategy for Digital Broadcasting that meets General Interest Objectives*: <http://www.mca.org.mt/consultation/making-digital-broadcasting-accessible-all>

<sup>10</sup> <http://www.mca.org.mt/consultation/policy-and-strategy-digital-broadcasting-meets-general-interest-objectives>.

<sup>11</sup> ACT No. VIII of 2011 – Broadcasting Amendment Act, 2011.  
<http://www.doi.gov.mt/EN/parliamentacts/2011/ACT%20VIII%20XANDIR.pdf>.

services could also receive the GI TV channels through the same equipment used for receiving the commercial TV channels<sup>12</sup>.

Complementing must-carry are 'must-offer' obligations incumbent on the GI broadcasters, placing an obligation for the GI TV channels to be included in the universal service package. Must-offer obligations require the broadcasters of these channels to offer their content to the operators of those broadcast networks subjected to must-carry obligations in order for such content to be universally available to the public<sup>13</sup>.

The Authority deems that the development of diverse TV broadcast networks and viewing platforms, accelerated by technology advances in digital TV broadcasting as well as a changing regulatory scenario, offers an opportunity to review must-carry obligations considering not only incumbent TV broadcast networks, but also new and emerging networks such as satellite and IP-based networks.

## 1.2 Legal Basis

The legal basis for this review is Regulation 49 of Legal Notice 273 of 2011 – Electronic Communications Networks and Services (General) Regulations, 2011 ('Regulation 49') (see Appendix A) transposing Article 31 of the Universal Service Directive ('USD') (see Appendix B).

Regulation 49 maintains that must-carry obligations may be imposed on undertakings providing electronic communications networks used for the distribution of TV broadcast channels and complementary services to the public, where a significant number of end-users of such networks use them as the principal means to receive TV broadcasts.

Must-carry obligations may be attached to a general authorisation in conformity with the USD<sup>14</sup>. Where must-carry obligations are imposed, the authorised undertaking is to distribute those terrestrial TV broadcasting services (i.e. GI TV channels) and comply with any broadcasting obligations as may be established by the Minister or by the Authority after consultation with the Broadcasting Authority<sup>15</sup>.

## 1.3 European Commission Guidance

European Commission guidance on must-carry obligations may be found in its Working Document on must-carry obligations under the 2003 regulatory framework for electronic communications networks and services of 22 July 2002<sup>16</sup>. Salient features are reproduced below:

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<sup>12</sup> This argument assumes that the equipment supplied by providers of pay-DTT services is compatible with the network used to broadcast the GI TV channels.

<sup>13</sup> 'must-offer' requirements are laid down in article 7(2) of the Copyright Act (Chapter 415 of the Laws of Malta).

<sup>14</sup> See Electronic Communications Networks and Services (General) Regulations, 2011, Seventh Schedule, Part A.

<sup>15</sup> Ibid, Ninth Schedule, Part 2, Section C.

<sup>16</sup> [http://ec.europa.eu/information\\_society/policy/ecomm/doc/current/broadcasting/working\\_doc\\_must\\_carry.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/current/broadcasting/working_doc_must_carry.pdf)



- Cable, satellite and terrestrial broadcasting networks are identified as traditional “broadcast” platforms serving the principal means to receive television broadcasts, and that the vast majority of households will continue to use a traditional “broadcast” platform for reception of broadcast channels in the foreseeable future. The use of other networks (e.g. 3G mobile networks or fixed telecommunications networks using DSL technologies) for broadcasting purposes is so far limited, and extension of must-carry rules to such networks would be disproportionate at the present stage of technological and market development. Extension of these obligations to other networks would only be legitimate if a significant number of end users were to use such networks as their principal means to receive television broadcast channels.
- USD Article 31 includes teletext and other services designed to enable appropriate access by disabled users, and excludes services which are not broadcast.
- Must-carry rules should be proportionate – i.e. must be the minimum necessary to achieve legitimate aims.
- Must-carry rules should be transparent – the radio and television broadcast channels and services benefiting from must-carry must be “specified”.
- There is no obligation on Member States to ensure remuneration for operators in return for must-carry obligations. However, where remuneration is provided, Member States will have to ensure that there is no discrimination between operators, and that it is applied in a proportionate and transparent manner (see Article 31 (2)). This provision aims to take account of the cost burden on operators operating in a commercial environment, taking into account the network capacity required for transmitting the programmes.
- In accordance with the Authorisation Directive (Article 6 and Annex 1), must-carry obligations in line with USD Article 31 are among the conditions that can be attached to the general authorisation to provide electronic communication networks.

It is observed that the Commission’s 2002 guidance is based on principles that are still largely pertinent today as they were back in 2002. In particular, and notwithstanding rapid advances in communications technologies, the traditional “broadcast” platforms – terrestrial, cable, satellite<sup>17</sup> – even today still serve as the principal means to receive television broadcast channels.

This review of must-carry obligations takes due cognisance of the European Commission’s guidance.

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<sup>17</sup> It should be however noted that satellite networks are absent in Malta, notwithstanding a high prominence of satellite dishes on roof-tops and facades. Such dishes are typically used to receive free-to-air satellite broadcasts or ‘spill over’ pay-TV satellite broadcasts over which Malta has no control.

## 2 The Local TV Environment

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### 2.1 Background

The broadcasting sector was liberalised in 1991 by virtue of the Broadcasting Act, which allowed private stations, both radio and TV, for the first time to apply for a broadcasting licence. The Act also led to the introduction of commercial analogue cable TV services offering a bouquet of local and foreign TV channels.

The next major development took place in 2005 when Government launched its policy on digital TV broadcasting, which introduced digital TV and at the same time instilled competition in the pay-TV market. Today, pay-TV captured over 96% of the TV market, which is shared roughly equally between the two commercial operators, GO plc<sup>18</sup> and Melita plc<sup>19</sup>.

February 2009 marked another milestone when Government announced its GIO Policy, leading to the launch of a third TV broadcast network operator, PBS Ltd. PBS Ltd is however not a commercial operator, being responsible for the GI TV channels' first transmission.

### 2.2 Free-to-Air TV Broadcasting

Free-to-air TV broadcasting is characterised by a mix of public and private sector TV stations. Until the DSO is completed, free-to-air broadcasting will remain available in both analogue and digital.

In analogue broadcasting, each TV station broadcasts on a VHF or UHF frequency, as assigned by the Broadcasting Authority and specified in its broadcasting licence. Four TV stations still hold an 'analogue' broadcasting licence, which is set to expire shortly marking the end of analogue TV broadcasting: TVM, Net TV, ONE and Smash TV.

As a result of the DSO, TV stations are no longer designated a specific frequency over which to broadcast their content, and a clear distinction is made between GI and commercial TV channels. Amongst others, GI TV stations are required to broadcast their respective GI TV channels on the GI TV broadcast network, whereas broadcasters operating commercial TV channels are required to seek carriage on one of the commercial TV broadcast networks.

Six digital TV channels are available on the GI TV broadcast network:

- The two public service TV channels TVM and Education 22; and
- Four private TV channels – Favourite Channel, Net TV, ONE and Smash TV – which have been identified by the Broadcasting Authority as meeting GIOs.

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<sup>18</sup> [www.go.com.mt](http://www.go.com.mt)

<sup>19</sup> [www.melita.com](http://www.melita.com)

According to a survey commissioned by the Digital Switchover Committee in May 2011, 3.4% of all households rely solely on free-to-air reception to watch TV<sup>20</sup>.

## 2.3 The Pay-TV Market

The pay-TV market is characterised by two quad-play service providers:

- Melita plc, the cable TV operator, which provides both analogue and digital cable TV services.
- GO plc, which offers both established DTT services as well as the recently launched IPTV services.

Until recently, both operators were required to carry the analogue terrestrial free-to-air TV stations on their network, as required by the Broadcasting Act prior to the amendments implemented through Act No. VIII of 2011 entitled the Broadcasting (Amendment) Act, 2011<sup>21</sup>.

According to a recent survey, it is estimated that 96.6% of households are subscribed to a pay-TV package with at least one of the local pay TV service providers<sup>22</sup>.

### 2.3.1 Cable TV

Melita plc<sup>23</sup> offers analogue and digital cable TV services, as well as digital radio, broadband internet and fixed telephony services over its cable network.

Seventeen (17) channels are still available on Melita's analogue cable network. Although this service is no longer marketed, it is understood that it is still being operated to service its existing analogue subscriber base, which is substantial in number.

Where digital TV services are concerned, Melita's bouquet consists of over 160 TV channels including 140 SD channels, 15 HD channels, 9 premium sports channels and 2 premium movies and series channels.

Three digital TV packages are offered:

- M – consisting of 38 digital TV channels and 61 digital radio channels.
- L – consisting of 83 digital TV channels and 61 digital radio channels.

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<sup>20</sup> The results of the survey may be found by following this link:

<http://www.dso.org.mt/assets/files/DSO%20May%202011%20Survey%20Results.pdf>

<sup>21</sup> <http://www.doi.gov.mt/EN/parliamentacts/2011/ACT%20VIII%20XANDIR.pdf>.

<sup>22</sup> The results of the survey may be found by following this link:

<http://dso.org.mt/assets/files/DSO%20May%202011%20Survey%20Results.pdf>.

<sup>23</sup> <http://www.melita.com/personal/tv/>

- XL – consisting of 155 digital TV channels, including 15 HD, as well as 61 digital radio channels<sup>24</sup>.

A recent survey of TV viewers estimates that 13% and 33% of households receive TV broadcasts via analogue and digital cable respectively.

### **2.3.2 DTT**

GO plc<sup>25</sup> offers around 60 SD digital TV channels on its DTT network, including 6 premium sports channels. Three DTT packages are offered<sup>26</sup>:

- Free+ – consisting of 15 TV channels.
- Silver+ – consisting of 38 TV channels.
- Gold+ – consisting of 53 TV channels.

A recent survey of TV viewers estimates that 50% of households receive TV broadcasts via DTT.

### **2.3.3 IPTV**

GO plc recently launched its IPTV packages<sup>27</sup>, complementing its DTT packages, becoming the first service provider to offer pay-TV on more than one TV broadcast network. Two packages have been introduced:

- Silver Interactive TV – consisting of 70 TV channels as well as a selection of games and widgets (such as Facebook).
- Gold Interactive TV – consisting of 100+ TV channels as well as a selection of games and widgets (such as Facebook).

Both packages include a selection of HD channels at an additional cost. IPTV is a new service and consequently no statistics are presently available.

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<sup>24</sup> The rental of melita netbox HD which is necessary to access the HD TV channels, is subject to an additional fee.

<sup>25</sup> <http://www.go.com.mt/Default.aspx?ID=1579>

<sup>26</sup> It should be noted that the six GI TV channels can be received by GO DTT customers.

<sup>27</sup> <http://www.gointeractivetv.com.mt>.

## 3 Proposed Guidelines on Must-Carry Obligations

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### 3.1 Rationale

The basic rationale for regulation is to ensure the attainment of Government's policy objectives for a particular sector. Of prime relevance in this context is the need to ensure pluralism and the availability of diverse programme content that reflects the Maltese culture and identity.

The Authority considers must-carry obligations essential to safeguard Government's policy objectives for the TV broadcasting sector. Such obligations ensure that GI TV channels are universally available – that is, available on prevalent TV broadcast networks that are used as the principal means used to receive TV broadcasts.

### 3.2 Underlying Criteria

Article 49 (1) of the ECNSR maintains that:

“ The Authority may impose reasonable “must carry” obligations for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts channels to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts ”.

According to the European Commission guidance (see section 1.3), the extension of these obligations to other networks would only be legitimate *if* “a significant number of end-users were to use such networks as their principal means to receive television broadcasts.”<sup>28</sup>. This suggests that a threshold, in terms of households connected to a particular TV broadcast network, is to be reached before must-carry obligations may be applied so as not to create disproportionate requirements on new entrants and on the development of new services.

The proposed guidelines balance the interest of TV users against the commercial interests of operators of TV broadcast networks. They safeguard universal availability of general interest content on all prevalent TV broadcast networks, whilst at the same time aiming for equitability in network capacity required for the carriage of the GI TV channels.

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<sup>28</sup> European Commission Working Document on ‘Must-carry’ obligations under the 2003 regulatory framework for electronic communications networks and services’, 22 July 2002, pg 5.

### 3.3 Proposed Guidelines

#### 3.3.1 Existing TV broadcast networks

When determining which of the existing TV broadcast networks would be subjected to must-carry obligations, the Authority shall consider the state of technological and market development, market structure, as well as target markets. In general, a commercial TV broadcast network that meets the following criteria would be subjected to must-carry obligations:

- is used by a significant number of end-users;
- is prevalent; and is
- used as the primary means for the reception of TV broadcasts.

In terms of whether any one of the prevalent commercial networks (i.e. analogue and digital cable, DTT) currently constitutes a primary or a secondary means of watching TV, it is relevant to refer to a statistic that emerged from the most recent survey of TV viewers. In the course of that survey, it was established that the number of households that have a subscription with more than one pay-TV operator falls in the region of just 7%. It is therefore reasonable to conclude that the prevalent commercial networks are all used by their end-users as the principal means for receiving TV broadcasts.

On the basis of these considerations, the Authority is of the view that three networks have over the past years reached a significant number of end-users:

- **Analogue cable TV broadcast network:** The analogue cable network has been subject to must-carry obligations since it was launched in 1991 under the relevant provision of the Broadcasting Act which, as a result of the recent amendments, no longer exists. Of all the relevant platforms under review, the analogue cable network has been around the longest and up until 2004 had a 100% market share of the pay TV market. A recent survey indicates that the network is still used as the principal means for end-users in around 13% of all households to receive TV broadcasts. The Authority considers the number of such households to be significant.

On the basis of the above, it is therefore reasonable to conclude that the analogue cable TV broadcast network should be subject to must-carry obligations.

- **Digital cable TV broadcast network:** The digital cable TV broadcast network launched in 2005 today enjoys a market share hovering around 33%, and is gradually replacing analogue cable TV. It is therefore reasonable to conclude that the digital cable TV broadcast network should be subject to must-carry obligations given the significant number of end-users using it as their principal means to receive TV broadcasts.
- **Commercial DTT broadcast network:** The commercial DTT broadcast network can be seen as having a significant number of end-users using it as their principal means

of receiving TV broadcasts, with a market share in the region of 50%. Launched in 2005, since then it captured a significant market share, in direct competition with the cable TV broadcast networks.

On this basis, it is also reasonable to conclude that the commercial DTT broadcast network should also be subject to must-carry obligations.

In this case, issues of spectrum efficiency and proportionality in application will however apply<sup>29</sup>. The relevant proviso can be seen below (see 3.3.3).

### **3.3.2 New TV broadcast networks**

In line with the European Commission guidance (see section 1.3), must-carry obligations will not apply to new TV broadcast networks until the Authority satisfies itself that a significant number of end-users is reached, and where such users use these networks as the principal means to receive TV broadcasts.

This approach encourages investment in new networks, such as IPTV and potentially satellite, since operators of such networks will not initially be compelled to reserve part of their network capacity for the broadcast of GI TV channels.

### **3.3.3 Reasonableness in application**

When imposing must-carry obligations, the Authority shall respect the principle of reasonableness in the process.

Among others, the Authority will consider whether the imposition of a must-carry obligation on a particular operator will entail an excessive cost burden, as in the case of satellite operators.

In this regard, the Authority shall, where it deems appropriate, consider proposals on the part of operators subjected to a must-carry obligation, for alternative ways to convey the GI TV channels to their end-users. When considering any such requests, the Authority shall be guided by the need to ensure that such channels will be seamlessly available to all end-users of that particular network, and that no undue burdens are placed on subscribers and/or end-users.

Furthermore, the Authority is conscious that under current circumstances, must-carry obligations on commercial DTT networks would result in unnecessary duplication of TV broadcasts as well as inefficient use of spectrum since end-users of such networks are able to receive the GI TV channels using the same equipment supplied by the DTT operator. For the purposes of spectrum efficiency, operators of commercial DTT networks would not be obliged to carry the GI TV channels on their network, provided that the equipment supplied to their end-users to receive the pay-TV channels can be seamlessly used to receive the GI TV channels.

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<sup>29</sup> The same argument was put forward in the GIO Policy.

### **3.3.4 Accessibility services**

Operators of those TV broadcast networks subjected to must-carry obligations shall distribute those accessibility services, as defined by the Broadcasting Authority from time to time and applicable to the GI broadcasters, alongside the respective GI TV channel.

### **3.3.5 Duration**

It is acknowledged that the establishment of must-carry obligations is one that varies over time as the relative importance of the various TV broadcast networks within the market increases or decreases accordingly. The Authority thus intends to review its nomination of networks subjected to must-carry obligations every three years, unless significant developments take place in the interim to the extent that they would warrant an earlier review.

## **3.4 Impact of Must-carry Obligations on TV Broadcast Network Operators**

The impact of a must-carry obligation on an existing network, both analogue<sup>30</sup> and digital, is understood to be minimal since it essentially extends the must-carry obligation imposed under the relevant provision of the Broadcasting Act prior to the provision being removed as a result of recent amendments. It is further understood that the impact of a must-carry obligation on a digital TV broadcast network operator is in general appreciably low, such that sufficient network capacity remains available to the operator for the broadcast of commercial TV channels and for the delivery of other services.

The Authority is therefore of the view that, where the obligation is imposed, this places no significant limitation on an operator's ability to offer attractive and competitive services.

The impact of any potential must-carry obligation for accessibility services to enable appropriate access for disabled end-users on TV broadcast networks depends on whether a TV channel offers such services, and if so, the manner in which such services are implemented, and the technologies employed. The Audiovisual Media Services ('AVMS') Directive, transposed into national law through the Broadcasting Act, requires Member States to encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability. This requirement applies particularly within the context of TV broadcasting which meets GIOs.

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<sup>30</sup> It is observed that all six GI TV channels were included in the analogue cable TV reception tier for a number of years and since the launch of each respective GI TV channel.



## 4 Submission of Comments

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The consultation period will run from the **1<sup>st</sup> September** through to the **29<sup>th</sup> September 2011**, during which the Authority welcomes written comments from operators of TV broadcast networks as well as interested parties on any of the matters presented in this consultation document.

Having analysed and considered the views and comments received, the Authority will confirm these guidelines and publish its decision stating which TV broadcast networks will be subjected to must-carry obligations taking into account responses to the consultation.

Receipt of comments will be acknowledged. Written representations will be made public by the Authority subject to the Authority's Internal Guidelines on Confidentiality published on 16 December 2004<sup>31</sup>, unless explicitly declared confidential. **Respondents are therefore asked to separate out any confidential material into a clearly marked annex.**

All responses to this consultation should be clearly marked "2011 Review of Must-Carry Obligations" and sent by post, facsimile or e-mail to:

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<sup>31</sup> The guidelines may be accessed by following this link:  
[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 A: Regulation 49 of Legal Notice 273 of 2011 – Electronic Communications Networks and Services (General) Regulations, 2011**

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49. (1) The Authority may impose reasonable “must carry” obligations for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts channels to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts:

Provided that such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.

(2) The Authority may determine, in a proportionate and transparent manner, the appropriate remuneration, if any, in respect of measures taken in accordance with subregulation (1):

Provided that in doing so the Authority shall ensure that in similar circumstances there is no discrimination in the treatment of undertakings providing electronic communications networks.

(3) The Authority shall review “must carry” obligations on a regular basis.

## **Appendix B: Article 31 of the Universal Service Directive**

1. Member States may impose reasonable "must-carry" obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of 25 May 2011, except where Member States have carried out such a review within the previous two years.

Member States shall review "must-carry" obligations on a regular basis.

2. Neither paragraph 1 of this Article nor Article 3(2) of Directive 2002/19/EC (Access Directive) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

Further guidance as to which networks might be covered by the Article may be found in recitals:

(45) Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services. Providers of such services should not be subject to universal service obligations in respect of these activities. This Directive is without prejudice to measures taken at national level, in compliance with Community law, in respect of such services.

### **Recital – Directive 2009/136/EC**

(48) Legal "must-carry" obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. Member States should provide a clear justification for the "must carry" obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In

that regard, "must carry" rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. "Must carry" rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Complementary services include, but are not limited to, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language.