



# **Making Digital Broadcasting Accessible to All**

**A Consultation Document relative to:**

**A Policy and Strategy for Digital Broadcasting  
that meets General Interest Objectives**

September 2007

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## Executive Summary

In the Digital Broadcasting Policy that was published towards the end of February 2005<sup>1</sup>, Government had reserved three frequencies (equivalent to three analogue channels) that could be allotted<sup>2</sup>, in a digital environment, to local broadcast content providers that met specific conditions. The policy highlighted the need for specific conditions applicable to broadcast content, termed General Interest Objectives (GIOs), to be established, as the fundamental criteria for such an allotment to take place.

The purpose behind the reservation of three frequencies for broadcasting that meets GIOs was to safeguard broadcasting having to do mainly with local content that meets defined quality standards. That objective remains the central focus of this proposed Policy and Strategy.

This Consultation Document addresses what are considered to be the general interests linked to broadcasting together with the related must-carry obligations incumbent on networks, and articulates how the two aspects, that is GIOs and must-carry obligations, come together from both a policy as well as an implementation standpoint.

This Document also proposes a revised broadcasting licence framework that takes into consideration the potential for the establishment of a fully commercialised broadcasting environment. The rationalisation exercise with respect to licence categories also seeks to address the current anomalies between broadcasting channels owned and run by multi-channel network operators, vis-à-vis the 'traditional' broadcasters.

Finally, this Document dwells on the implications of digital radio on the audio broadcasting sector. In this respect, it is premised that both current FM transmissions and digital radio transmissions can co-exist, at least in the foreseeable future. Thus no policy intervention, with a view to safeguarding the general interest, is considered as being required at this stage.

The proposed Policy and Implementation Strategy essentially supports four key objectives:

- That current analogue broadcasting continues to be available up to the analogue turn off date established for end 2010. This should ensure that adequate time is given to the public to make the necessary investment in the purchase of a compatible set-top-box, a prerequisite for the reception of digital television<sup>3</sup>.
- That quality broadcasts that address the social, cultural and educational needs of the Nation continue to be universally available in the face of a more competitive market specifically through the guarantee of access to the airwaves and to the redistribution networks. The role of public service broadcasting remains key to the attainment of this objective.

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<sup>1</sup> Policy and Implementation Strategy regarding DTTV, 3G and BWA published on the 23/02/2005 <http://www.mca.org.mt/infocentre/openarticle.asp?id=565&pref=11>

<sup>2</sup> The term 'allotment' in this case and throughout the rest of this document is taken to mean an assignment, by the BA to a broadcast channel, of a portion of a frequency. It is not to be construed as corresponding with the specific definition contained Sect. II Art 1.17 of the ITU regulations.

<sup>3</sup> An MCA survey published on the 1<sup>st</sup> August 2007 established that around 19% of households currently make sole use of analogue terrestrial television. This would equate to around 25,000 households.

- That such broadcasting continues to be free-to-air and therefore free-to-view in the Digital environment.
- That Government policy does not stifle the market. It is not Government's intention to establish how the market should develop in response to the changing scenario. It is felt that the most appropriate policy framework is one that will allow commercial broadcasters to establish their preferred business model. It is therefore the intention to make it possible for both free to air and subscription broadcasts to be licensed under the Broadcasting Act and for new business models such as fully commercial subscription broadcasts to be established.

### ***Developments subsequent to the 2005 Digital Broadcasting Policy***

The 2005 Digital Broadcasting Policy was built on a number of premises that do not necessarily hold any longer due to largely unforeseen developments in the past two-and-a-half years. It is important that these developments are duly taken into account, given that they play a key role in the shaping of this proposed Policy. These developments are briefly described hereunder:

The Policy had stated the intention to reserve three frequencies for broadcasting meeting GIOs, and had also established that two network licences for two blocks of eight frequencies each, could be issued. This implementation strategy had been based on the availability of nineteen coordinated frequencies. Fifteen of these had been fully coordinated with neighbouring countries in 2004.

The ITU Regional Radiocommunication Conference, which took place during May-June 2006 (RRC-06), resulted in a negative impact on Malta's newly acquired spectrum capacity. During that meeting, which involved Europe, North Africa and a part of Asia, participating States were split in regions. Generally, each cross-border region was allotted eight (8) UHF and one (1) VHF frequency, as a minimum guaranteed interference-free allotment for DTTV services. Malta sought and obtained recognition as a full region despite being substantially smaller in terms of surface area, and therefore secured the minimum allotment.

Another outcome of the RRC-06 was that the Chester Agreement<sup>4</sup> was no longer applicable. This meant that existing analogue channels, even though fully coordinated between neighbouring States, could not be automatically issued for digital broadcasting purposes, but would have to be coordinated again.

In theory this new order should not really have impacted existing agreements, given that any existing bi- or multi-lateral coordination agreements could continue to apply if the respective signatory States confirmed them. Italy, however, chose not to re-confirm the coordination agreements that it had concluded with Malta some time before.

The MCA has since sought to start off with a fresh coordination exercise with its counterpart spectrum agency in Italy but, for reasons beyond the MCA control, this is proving to be an exceedingly slow moving process. In the final analysis, successful re-coordination with Italy also means that the latter will have to clean up the airwaves in question from substantial 'pollution' that Italian broadcasters are creating to the detriment of Maltese undertakings.

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<sup>4</sup> Chester Agreement – 1991 agreement that stipulated the right of individual states to convert their analogue channel assignments into digital ones without the need to resort to cross-border coordination.

This background is essential in that it re-shapes the scenario on which the Government's 'umbrella' Digital Broadcasting Policy of 2005 was premised. The implications are the following:

- Malta has, following RRC-06, nine (9) coordinated frequencies immediately available for DTTV broadcasting as against the original nineteen (19).
- This has meant a temporary reshaping of the original allocation of coordinated frequencies, for commercial and public service use, from sixteen (16) and three (3) to seven (7) and two (2) respectively.
- Whereas a fresh coordination process with Italy and other neighbouring countries started off at the earliest possible, following the conclusion of RRC-06, progress with Italy is proving to be rather slow.

Another key development, that has had a significant impact on the Maltese Digital Terrestrial Television (DTTV) horizon, has been the take-over of Multiplus by GO<sup>5</sup> in February 2007. As a result of this GO have relinquished their existing licence, together with eight channels.

A fresh call for expressions of interest for a second commercial DTTV network operator cannot be considered for the moment given that no internationally coordinated spectrum is currently available. Additional frequencies should become available subject to successful finalisation of the coordination process currently under way with neighbouring countries. Any allocation of frequencies for a second network operator can only be made when the final number of frequencies that are available to Malta, for digital terrestrial broadcasting purposes, is known.

In the case of the three frequencies originally reserved for broadcasting that meets GIOs the Government remains committed to allocate such frequencies for the purpose. Two frequencies are immediately available. The remaining frequency will be made available as soon as the necessary coordination procedures, between Malta and neighbouring countries, are successfully concluded.

Whilst the Government has every intention to abide by ITU rules, with respect to international coordination, such a course of action cannot be unilateral. The Government is committed to seeking a negotiated solution to this issue with neighbouring countries. Nonetheless, alternative courses of action may have to be taken in case of continued disregard of ITU policies and agreements on the part of such countries.

### ***General Interest Objectives (GIOs)***

The basic rationale for regulation is to ensure the attainment of Government's policy objectives for a 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.

A number of GIOs, together with the underlying principles, are being proposed. These objectives have to do with:

- promoting cultural diversity,
- providing educational programming,
- objectively informing public opinion, and

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<sup>5</sup> Up to the date of the takeover GO had not as yet re-branded and was licensed as Maltacom.

- guaranteeing pluralism.

These GIOs equate to a public service remit, which remit may be carried out either directly by Government or through a public entity. Alternatively, the Government may opt to entrust all or part of, the provision of the service of general interest to one or more private entities.

Over the past years pluralism has been achieved through the liberalisation of access to broadcasting and through the fair apportionment of broadcasting facilities and airtime. With respect to content the National Broadcasting Policy, through the definition of the public service obligation (both core and extended) provides a clear outline of the broadcast content that is deemed to be of importance to the nation as a whole.

Consideration has been given to the need to ensure that a quantum of general interest content, other than that provided by the public broadcaster, continues to be available in light of the proposed change in the licensing process and a much more competitive content market. The reservation of frequencies, guarantees that this general interest content will continue to have guaranteed access to the airwaves. In this respect a scenario where a number of privately owned stations, in addition to the public owned stations, play a significant role in the delivery of general interest objectives is being presented as the preferred option. In this scenario the public stations will continue to be entrusted with the delivery of the full spectrum of GIOs linked to broadcasting, in other words, the Public Service Obligation as outlined in the National Broadcasting Policy. However private stations would also be able to qualify as meeting GIOs if they meet the requirements being established for this classification. The remit placed on private broadcasters would complement the public stations, which will continue to provide the basis of public service broadcasting and whose remit will continue to be the more onerous.

Private broadcasters would also be able to opt for a commercial broadcast content licence where content regulation would be kept to the minimum at law as established for the different programme genres broadcast.

Three categories of broadcasting licences are being proposed, namely a public service broadcasting licence; a broadcasting licence that is issued to private stations that broadcast a quantum of general interest content and a broadcast licence of a purely commercial nature.

### ***Other Policy Considerations***

The reservation of one full frequency for use by Government is seen to be an ideal course of action. Such a frequency would carry the publicly owned broadcasting stations. The additional transmission capacity could be reserved for the possible introduction of new services, such as broadcast related services and other public services that can be delivered through this technology platform. Capacity on the remaining two frequencies would be allotted to broadcast content providers qualifying as meeting GIOs.

The amount of capacity or bandwidth that could be allotted to each broadcast channel is being proposed.

This document also puts forward how any must-carry obligations, which can only be applied with respect to broadcast content meeting GIOs, will be applied across technology platforms.

Must-offer obligations, the possibility of broadcast licence holders entering into commercial agreements with network operators and related aspects are also discussed in the light of the three broadcast licence categories that are being proposed.

### ***Implementation Strategy***

The implementation strategy being considered will not affect current analogue transmissions, which will continue to be available on the terrestrial stations as well as the cable network<sup>6</sup> up to the analogue turnoff date (ATO), currently established for the end of 2010.

The implementation strategy is premised on the separation of the network operation function from the provision of broadcast content. Very broadly the Malta Communications Authority will be responsible for determining the relevant must-carry obligations on the various platforms and ensuring that these are respected. The Broadcasting Authority will licence broadcast content providers and monitor their activities in line with their respective obligations.

The general principles that form the basis of the National Broadcasting Plan continue to be valid, however an update of the Plan and the Broadcasting Act is required in order to reflect the proposals being put forward. The changes being considered have been identified and are also presented in this document.

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<sup>6</sup> The term 'cable networks' as used in this context and throughout this document, refers to fixed-line electronic communications networks transmitting over coaxial cable. It is therefore used in the more narrow and technologically appropriate sense, as against wider definitions that are found in local legislation.

## 3. CONTENT

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<b>1. INTRODUCTION.....</b>	<b>1</b>
1.1. OBJECTIVE.....	1
1.2. BACKGROUND.....	1
1.3. STRUCTURE OF REPORT.....	4
1.4. DEFINITIONS.....	4
<b>2. GENERAL INTEREST OBJECTIVES .....</b>	<b>6</b>
2.1. EU PERSPECTIVE .....	6
2.1.1. <i>Audiovisual Policy</i> .....	6
2.2. SOME CROSS-COUNTRY COMPARISONS.....	8
2.3. LOCAL CONTEXT .....	8
2.3.1. <i>Policy Background</i> .....	8
2.3.2. <i>Legislation</i> .....	9
2.4. CRITERIA TO CLASSIFY BROADCAST CONTENT.....	10
2.5. TELEVISION .....	11
2.5.1. <i>Current Broadcasting Situation</i> .....	11
2.5.2. <i>Underlying Policy Considerations</i> .....	12
2.5.3. <i>Implementation Scenario</i> .....	14
2.5.4. <i>Rationale</i> .....	15
2.6. RADIO.....	15
<b>3. ACCESS TO TRANSMISSION CAPACITY .....</b>	<b>17</b>
3.1. LEGISLATIVE FRAMEWORK .....	17
3.2. POLICY DIRECTION .....	17
3.3. ASSIGNMENT OF RIGHTS OF USE OF THE RESERVED FREQUENCIES AND RELATED MUST CARRY OBLIGATIONS. ....	18
3.3.1. <i>Legal Provisions</i> .....	18
3.3.2. <i>Must Carry on Digital Terrestrial Networks</i> .....	19
3.3.3. <i>Must Carry on Cable</i> .....	19
3.3.4. <i>Must Carry on Other Platforms</i> .....	20
3.4. ALLOTMENT OF TRANSMISSION CAPACITY TO QUALIFYING BROADCAST CONTENT.....	20
3.4.1. <i>Proposed Terms of Allotment</i> .....	20
3.4.1. <i>High Definition (HD) Television transmission</i> .....	21
3.5. MUST-OFFER OBLIGATIONS.....	22
3.6. REMUNERATION FOR CARRIAGE AND COPYRIGHT FEES.....	23
3.7. ENVISAGED MUST-CARRY ARRANGEMENT FOR DTTV IN MALTA. ....	23
3.7.1. <i>Key Developments</i> .....	23
3.7.2. <i>Impact on the Development of further DTTV commercial networks</i> .....	24
3.7.3. <i>Impact of 'Must Carry' on the existing terrestrial platform</i> .....	25
3.8. OTHER ASPECTS CONCERNING CARRIAGE OVER THIRD PARTY INFRASTRUCTURE.....	25
3.8.1. <i>Quality of available infrastructure</i> .....	25
3.8.2. <i>Level of service provided by the network operators</i> .....	26
<b>4. IMPLEMENTATION STRATEGY.....</b>	<b>27</b>
4.1. GENERAL .....	27
4.2. LEGAL FRAMEWORK .....	28
4.2.1. <i>Electronic Communications Sector</i> .....	28
4.2.2. <i>Broadcasting and Audiovisual Sector</i> .....	28
4.3. BROADCAST CONTENT LICENSING PROCESS .....	31
4.3.1. <i>Commercial Broadcast Content Licences</i> .....	31

4.3.2. <i>Broadcast Licences with a Public Service Remit</i> .....	31
2 <i>Programming of an educational and cultural nature</i> .....	32
4.4. MUST-CARRY OBLIGATIONS .....	34
4.5. KEY STAKEHOLDERS.....	34
4.6. NEXT STEPS .....	35
<b>5. CONSULTATION FRAMEWORK .....</b>	<b>36</b>
<b>APPENDICES.....</b>	<b>37</b>
APPENDIX A - PUBLIC SERVICE OBLIGATION FOR PBS LTD. ....	37
<b>BIBLIOGRAPHY .....</b>	<b>39</b>
<b>GLOSSARY .....</b>	<b>42</b>



## **1. INTRODUCTION**

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### **1.1. Objective**

This Consultation Document proposes a policy and implementation strategy in respect of digital terrestrial broadcasting that meets clearly defined GIOs and puts forward for public consultation proposals relative to:

- the criteria that will be used to classify a broadcast channel as one meeting GIOs;
- the process to be used by the Broadcasting Authority to allot capacity to the qualifying broadcasts;
- the relationship between must-carry obligations and GIOs
- the application of must-carry obligations across transmission platforms; and
- the conditions attached to the usage of frequencies reserved for broadcasting that meets GIOs.

The policy proposal covers both radio and television transmissions.

This Document also proposes a revised broadcasting licence framework that takes into consideration the potential for a fully commercialised broadcasting environment. The rationalisation exercise with respect to licence categories also seeks to address the current anomalies between broadcast channels owned and run by multi-channel network operators, vis-à-vis the 'traditional' broadcasters.

This Consultation Document has been prepared, and is being issued for consultation, by the MCA and the BA. Following the assessment of the responses to this consultation the two authorities will submit a final policy proposal to Government for approval and adoption as official Government policy.

### **1.2. Background**

The technological advances of the past years have led to a situation whereby networks that were previously dedicated to the transmission of a specific service, have now evolved to a stage where they may be used for the provision of voice, data and video services. This convergence of communications platforms has led to the gradual obsolescence and, as a result, the necessary review, of the policy frameworks that have governed the supply and transmission of specific communications services over dedicated infrastructure. In the area of broadcasting the paradigm shift has been brought about by the digitisation of both radio and television transmission. While in the analogue world radio and television stations transmit on dedicated radio frequencies, with the advent of digitisation each frequency channel can be used for the transmission of multiple stations. In addition the same frequency channel can also be used for other 'new' services such as Internet<sup>7</sup> access.

These developments prompted Government to establish a policy on Digital Broadcasting. The process was launched in July 2004 with the publication for

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<sup>7</sup> It is understood that download would be via DTTV whereas return path would normally be established via an alternative route, eg. ADSL or Cable broadband.

consultation of a draft Policy and Strategy. In February 2005, Malta formalised its policy position and soon after the Malta Communications Authority issued a call for the assignment of rights of use of radio frequencies for the purpose of establishing digital terrestrial television networks. Two blocks of eight frequencies were issued and assignment was effected, in May 2005, to the two entities<sup>8</sup> that had made the required submission.

The reservation of three frequencies for broadcasting meeting GIOs, as well as the issuance of two licences relative to two blocks of eight frequencies each, underpin the 2005 Digital Broadcasting Policy. The relative considerations had been made thanks to the availability of nineteen fully coordinated<sup>9</sup> frequencies.

In anticipation of the Digital Broadcasting Policy framework, Malta had, between 2003 and 2005, finalised the coordination process for fifteen (15) frequencies with its neighbouring countries, notably Italy, which from Malta's perspective presents the biggest challenge on this front. A further four (4) available frequencies, which Malta had already coordinated for analogue broadcasting and which, in accordance with regulatory instruments available at the time, were considered as automatically eligible for digital use, were also earmarked for digital broadcasting.

The, ITU Regional Radiocommunication Conference (RRC-06) which took place during May-June, 2006, had a negative impact on Malta's newly acquired digital capacity. During that Conference, which involved Europe, North Africa and a part of Asia, participating states were divided into regions. Generally, each cross-border region was allotted eight (8)UHF and one (1) VHF frequency, as a minimum guaranteed interference-free allotment for DTTV services. Malta sought and obtained recognition as a full region despite being substantially smaller in terms of surface area, and therefore secured the minimum allotment.

This new order of things should not really have changed existing agreements, given that existing bi- or multi-lateral coordination agreements could continue to apply, if the respective signatories confirmed the agreements. Italy, however, chose not to re-confirm the coordination agreements that it had concluded with Malta some time before. The MCA has since sought to re-start a fresh coordination process with the relevant entity in Italy responsible for spectrum assignment and management. Due to circumstances beyond the MCA's control this is proving to be quite a slow moving process. In the final analysis, successful re-coordination with Italy also means that the latter will have to clean up the airwaves from substantial 'pollution' that Italian broadcasters are creating to the detriment of Maltese undertakings.

RRC06 overruled all pre-existing agreements. As a result the Chester Agreement was rendered inapplicable. This meant that existing analogue channels, even though fully coordinated, now have to be coordinated with neighbouring countries again for digital purposes.

This background is essential in that it re-shapes the scenario on which the original Digital Broadcasting Policy was premised. The implications are the following:

- Malta has, following RRC-O6, nine (9) coordinated frequencies immediately available as against the original nineteen (19).

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<sup>8</sup> The two entities in question were Multiplus Ltd., and Maltacom Plc

<sup>9</sup> The coordination of frequencies with neighbouring countries is a necessary ITU prerequisite to the use of frequencies by a country in its national territory. This coordination process is necessary so as to minimise cross-border interference between TV and radio transmissions.

- This has meant a temporary reshaping of the original allocation of available frequencies for commercial and public service use from sixteen (16) and three (3) to seven (7) and two (2) respectively.
- Whereas a fresh coordination process with Italy and other neighbouring countries started off at the earliest possible, following the conclusion of RRC-06, progress is proving to be rather slow.

Another key development that has had an impact on the Maltese DTTV landscape, has been the take-over of Multiplus by GO. As a result of this GO have relinquished the licence originally issued to them in 2005 together with the corresponding eight channels.

A fresh call for expressions of interest for a second commercial DTTV network operator cannot be considered for the moment given that no internationally coordinated spectrum is currently available. Additional frequencies should become available subject to successful finalisation of the coordination process currently under way with neighbouring countries. Any allocation of frequencies can only be made when the final number of frequencies that are available to Malta, will be known.

Even allowing for the possibility that all frequencies can be re-coordinated, technological developments during the past two years have been such that Government will be well advised to review extant policy with a view to determining the optimal application of any additional secured radio spectrum. Such technology developments, notably in mobile data services and mobile TV transmission, translate into competing pressures for spectrum that had traditionally been considered the exclusive territory of fixed (as distinct from mobile) TV transmission.

Government policy has to move in sync with such technological developments and address related commercial pressures emanating from such developments.

In the case of the three frequencies originally reserved for broadcasting that meets GIOs, Government remains committed to this. Two frequencies are immediately available. The remaining frequency will be reserved for this purpose following successful conclusion of the coordination procedure currently under way with neighbouring countries.

The developments outlined in the preceding paragraphs, together with their resultant implications, have been factored into this policy proposal. Although they do have a bearing on the rollout strategy, they do not, in the final analysis, impinge on the principles that underpin the concept of broadcasting that meets GIOs.

In establishing the process for the assignment of rights of use of frequency, the 2005 Digital Broadcasting Policy took into consideration the EU Directive on a common regulatory framework for electronic communications, networks and services (the Framework Directive)<sup>10</sup> that establishes the regulatory regime for transmission networks and creates a clear distinction between the regulation of the transmission networks and the regulation of content. Among others the said Directive, in conjunction with the Directive on the authorisation of electronic communications, networks and services (the Authorisation Directive)<sup>11</sup> allows Member States to take specific measures in order to pursue general interest objectives (GIOs) relating to content regulation and audio-visual policy.

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<sup>10</sup> Directive 2002/21/EC

<sup>11</sup> Directive 2002/20/EC

Specific measures may therefore be applied in respect of broadcasters if these are necessary in order to achieve GIOs on the basis of a set of clearly defined criteria<sup>12</sup>. Thus GIOs become the basis for the establishment of eligibility, on the part of broadcasters, to benefit from must-carry provisions that may become incumbent on commercial platforms that are utilised by a significant number of end-users<sup>13</sup>.

### **1.3. Structure of report**

Section 2 of the report captures the considerations made and the proposals being put forward in respect of the criteria to be used to classify broadcast content as one that meets GIOs. It also puts forward two possible implementation scenarios along with the relevant considerations.

Section 3 highlights the conditions that will be attached to the operation of frequencies reserved for broadcasting that meets GIOs. It also puts forward how network transmission capacity will be allotted to local broadcast content providers. The must-carry obligation as currently established at law has been addressed in terms of its strict relationship with GIOs as well as with respect to its application across different technology platforms. A proposed position in respect of both the current analogue broadcasting licences and future digital licences has been put forward.

Section 4 presents a proposed implementation strategy outlining the envisaged changes to current legislation, the processes involved and the key stakeholders.

### **1.4. Definitions**

In this document the following definitions have been used:

*Broadcaster:* The term Broadcaster has been used to refer to the natural or legal person who has editorial responsibility for the composition of schedules of television programmes irrespective of whether he transmits them or has them transmitted by third parties.

*Broadcast Content Provider:* The term Broadcast Content Provider has been used where a clear distinction between the entity editorially responsible for the content of television programmes and the transmission network operator was required.

*Network Operator:* The term describes the entity that operates the physical transmission link between the content provider and the viewers and therefore provides the transmission capacity for delivery of radio and television broadcast content. This term is being used in the context of digital transmissions.

*Platform:* This is the medium over which transmissions are delivered e.g.. terrestrial, satellite, cable, IP.

*Service Provider:* The term describes the entity that packages channels and

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<sup>12</sup> Framework Directive 2002/21/EC Article 1 clause 3; "This Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

<sup>13</sup> 'Must Carry' provisions are addressed in Article 31 of the Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

services into various bundles and offers them to viewers. Locally all television network operators are also authorised to provide services.

## 2. GENERAL INTEREST OBJECTIVES

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### 2.1. EU perspective

The EU framework for electronic communications networks and services<sup>14</sup> establishes the regulatory regime for transmission networks including networks used for the broadcasting of radio and television. The Framework creates a clear distinction between the regulation of the transmission networks and the regulation of content<sup>15</sup> while at the same time recognising the links between them and it allows Member States to guarantee access of broadcast content to the transmission networks in order to pursue general interest objectives<sup>16</sup>.

The following extract from the Communication COM (1999) 0657, entitled Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age, provides the background to the above direction:

The audiovisual sector has been traditionally subject to certain rules which have aimed to guarantee access to certain types of content which, left to the market alone, may not always be made available. These rules may require adaptation in the future in the light of technological and market developments.

With regard to cable networks, for example, so-called "must carry" rules have obliged cable operators to make available certain television channels. In most cases, these channels have been operated by public service broadcasters. Given the limited capacity of cable in an analogue setting, "must carry" rules have involved a delicate balance between the achievement of important general interest objectives (pluralism, programming in minority languages and so on) and maintaining enough free capacity in the cable to provide access for other services.<sup>17</sup>

#### 2.1.1. Audiovisual policy

The EU recognises the key role that broadcasting plays in the development and transmission of social values and has therefore made provision for the regulation - from a content standpoint - of the sector. The regulatory framework, which encompasses both public and commercial broadcasting, has been established through the Television without Frontiers Directive (TWF)<sup>18</sup>. Member States can also provide and support public broadcasting services that fulfil a specific public service remit in the general interest.

While Member States have to date been provided with substantial leeway in establishing which broadcasts meet GIOs, it is important that clearly defined GIOs in line with EU direction are established in order to ensure that any measures taken are

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<sup>14</sup> Framework Directive, Authorisation Directive, Universal Service Directive, Access Directive.

<sup>15</sup> Recital 5 of the Framework Directive states that 'this framework does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content.'

<sup>16</sup> Authorisation Directive Article 5; Universal Service Directive Article 31.

<sup>17</sup> Sect 4.2, Page 15

<sup>18</sup> Directive 89/552/EEC Television without Frontiers as amended by Directive 97/36/EC. This Directive has been revised and will be renamed Audiovisual Media Services Directive. It should enter into force by end 2007. Member States will be given 24 months to transpose the new provisions into national law.

justified and objectively implemented. It is also worth noting that the Commission has embarked on a number of studies to review the practices in place across the Member States with a view to ensuring that there are clear links between the obligations placed upon public service broadcasters and the GIOs that have been established.

The Commission's Green Paper on Services of General Interest (2003) defines services of general interest as services which the public authorities class as being of general interest and subject to specific public service obligations<sup>19</sup>. It further refers to obligations in the general interest as public service obligations, which are defined as specific requirements that are imposed by public authorities on the providers of services in order to ensure that certain public interest objectives are met.

Insight as to what constitutes a GIO in broadcasting can be found in the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (2001/C 320/04). Para. 36 describes services offered to the public in the general interest as services having a public service remit.

It states:

*'The definition of the public service remit would, however, be in manifest error if it included activities that could not reasonably be considered to meet, in the wording of the Protocol, the **democratic, social and cultural** needs of each society. That would normally be the position in the case of e-commerce, for example.'*

Para 7 of the same Communication recognises that public service broadcasting has an important role to play in:

- promoting cultural diversity in each country,
- providing educational programming,
- objectively informing public opinion,
- guaranteeing pluralism and
- supplying, democratically and free-of-charge, quality entertainment.

It also recognises that some commercial broadcasters are also subject to public service obligations and play a role in achieving general interest objectives by contributing to pluralism, culture and political debate, as well as widening the choice of programmes.<sup>20</sup>

The Council resolution dated 25 January 1999 concerning public service broadcasting (1999/C 30/01) states:

*'broad public access, without discrimination and on the basis of equal opportunities, to various channels and services is a necessary precondition for fulfilling the special obligation of public service broadcasting'*

The following are the high level criteria that would need to be met by a broadcast channel qualifying as meeting GIOs.

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<sup>19</sup> Para 16 of Green Paper states 'The term «services of general interest» cannot be found in the Treaty itself. It is derived in Community practice from the term «services of general economic interest», which is used in the Treaty. It is broader than the term «services of general economic interest» and covers both market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations.'

<sup>20</sup> Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04) Para 14.

Having a Public Service Remit

**Free-to-Air**

**Linear Service (Broadcast)**  
as distinct from a Non-linear Service (e.g. Video on Demand), as defined in the Audio-Visual Media Services Directive<sup>21</sup>

The Communication from the Commission on Services of General Interest in Europe (2001/C 17/04) goes further to clarify that activities covered by the public service remit may be carried out either directly by Government or the Government may entrust the provision of the service of general interest to another public or private entity.

## 2.2. Some cross-country comparisons

A number of approaches have been taken by different countries in terms of what constitutes the public service remit linked to broadcasting and how it is delivered. In most European countries the public service remit is delivered exclusively by the public broadcaster. On the other hand in the UK, Sweden and Norway, commercial broadcasters also have public service broadcaster (PSB) status and obligations<sup>22</sup>. Irrespective of the approach adopted, what is important is a clear definition of the public service obligations that justify the undertaking by Government of any measures aimed at supporting the operations of the identified entities. In this respect support can be in financial terms or even in terms of guaranteeing access to capacity on communications platforms through the assignment of rights of use of frequency or must-carry protection.

## 2.3. Local context

### 2.3.1. Policy background

Within the local context the role to be played by public broadcasting services and a classification of those broadcasting stations that provide a public broadcasting service can be found in the National Broadcasting Plan<sup>23</sup>.

The Plan specifies that public broadcasting services are to provide:

- high quality programming across the full range of public tastes and interests<sup>24</sup>;
- programming of an educational and cultural nature;<sup>25</sup>
- news and current affairs programming which respect the Constitution<sup>26</sup>; and

<sup>21</sup> Set to enter into force by end of 2007:

[http://ec.europa.eu/avpolicy/reg/tvwf/modernisation/proposal\\_2005/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm)

<sup>22</sup> EPRA Research to assess the development of digital terrestrial television across Europe - June 2004. Table 4.5. note 2.

<sup>23</sup> The National Broadcasting Plan is found in the Second Schedule of the Broadcasting Act (Cap. 350).

<sup>24</sup> National Broadcasting Plan Second Schedule Broadcasting Act Cap. 350 para 16

<sup>25</sup> National Broadcasting Plan Second Schedule Broadcasting Act Cap. 350 para 16



- a comprehensive and accurate information service in the interests of a democratic and pluralistic society<sup>27</sup>.

It also identifies the following<sup>28</sup> broadcast programme channels as constituting Malta's public broadcasting media:

- Public Broadcasting Services (PBS) Ltd., with its television channel and two radio services; and
- The educational channel.

A detailed articulation of what constitutes the public service remit to be delivered by the national station can be found in the National Broadcasting Policy published in April 2004 by the Ministry for Culture and Tourism and the Ministry for Information Technology and Investment. This document refers to PBS Ltd. as 'the only station which carries a public service obligation'<sup>29</sup>. The document also recognises Government's responsibility to ensure that the public broadcaster provides the Nation with a varied programme schedule including programming content that would otherwise not be aired due to its commercial non-viability.

The National Broadcasting Policy established for the first time the concept of a public service obligation contract detailing programming content that the Government would like the broadcaster to air and for which the latter is paid a sum of money. It further emphasised that the content, for which payment is made, is in respect of that content that would not normally attract advertising revenue.

The document goes further to categorise the public service obligation of PBS Ltd. into two, a core public service obligation (CPSO) and an extended public service obligation (EPSO). Government considers the core public service obligations to be coverable from general advertising revenue while the extended service needs to be funded. The specific obligations are captured in Appendix A.

The policy document also recognises that such programme genres exist on other stations, even commercial ones. Their commercial status does not diminish the programmes' public service nature.

### **2.3.2. Legislation**

All private television or radio broadcasts are licensed under the Broadcasting Act (Cap.350). The Act distinguishes between teleshopping and non-teleshopping<sup>30</sup> television and radio broadcasting stations, and between national and community radio broadcasting stations.

The Act also imposes a number of obligations<sup>31</sup> on broadcasting licence holders (except in the case of teleshopping television stations) amongst which are:

- (1) that sufficient time is given to news and current affairs and that all news given in the programmes (in whatever form) is presented with due impartiality;*

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<sup>26</sup> National Broadcasting Plan Second Schedule Broadcasting Act Cap. 350 para 19

<sup>27</sup> National Broadcasting Plan Second Schedule Broadcasting Act Cap. 350 para 19

<sup>28</sup> The Community Channel is also listed in the National Broadcasting Plan but it is no longer in operation.

<sup>29</sup> National Broadcasting Policy pg 2.

<sup>30</sup> Broadcasting Act Articles 10, 40 (1) and Third Schedule para. 29.

<sup>31</sup> Broadcasting Act Article 13 subarticle 2

- (2) *that proper proportions of the recorded and other matter included in the programmes are in the Maltese language and reflect Maltese cultural identity;*
- (3) *that the programmes broadcast contain a substantial proportion of matter closely designed to appeal to the interest, tastes and outlook of the general public; and*
- (4) *that due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy.*

The Broadcasting Act also establishes that all terrestrial and free of charge television broadcasting services licensed in Malta (excluding broadcasts dedicated to teleshopping) are covered by a must-carry obligation<sup>32</sup> on any system carrying out retransmission of television broadcasting services.

## **2.4. Criteria to classify broadcast content**

While a public service remit has been formally recognised for the government owned stations namely:

### **Television**

- Television Malta broadcast by PBS Ltd., and
- Channel 22 the educational channel broadcast by the Ministry of Education

### **Radio**

- Radju Malta and Radju Parlament by PBS Ltd.; and
- Campus FM broadcast by the University of Malta;

The current obligations imposed on private owned television and radio stations and the must-carry protection afforded to these television stations highlights the importance that has been given to these transmissions in their role to provide pluralism, and to protect the linguistic and cultural heritage of the nation, all of which are aspects of general interest.

Another consideration is the international obligation that Malta is signatory to under the Prague Declaration (1994) that requires the Government to guarantee at least one comprehensive wide-range programme service comprising information, education, culture and entertainment which is accessible to all members of the public, while acknowledging that public service broadcasters must also be permitted to provide, where appropriate, additional programme services such as thematic services. The inclusion of thematic services is important in that it allows for the possible categorisation of niche stations as stations with a public service remit and therefore of general interest. Clearly such a qualification requires the specific content to qualify as being of general interest and also that a nation wide segment of viewers be targeted, for example the education channel.

Over the past years pluralism has been achieved through the liberalisation of access to broadcasting. With respect to content the National Broadcasting Policy through the definition of the public service obligation (both core and extended) provides a clear outline of the broadcast content that is deemed to be of importance to the Nation as a whole.

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<sup>32</sup> Broadcasting Act, Article 40 (1)

In view of the above the following are the criteria being proposed to classify a broadcast channel as meeting general interest objectives based on the role identified in the National Broadcasting Plan.

Any broadcast channel that is classified as fulfilling general interest objectives will need to **complement** the PBS Ltd. offering and play a role in delivering all or part of the following:

- quality programming across the full range of public tastes and interests;
- programming of an educational and cultural nature;
- news and current affairs programming; and
- a comprehensive and accurate information service in the interests of a democratic and pluralistic society.

A clearly defined general interest obligation on the lines of the public service obligation established for PBS Ltd. would also need to be established and measured for all such broadcast channels.

Channel 22 clearly fulfils this role, being focused on programming of an educational nature which is not provided by PBS Ltd. Likewise the National Broadcasting Policy envisages coordination and synergy between the PBS Ltd. radios and Campus FM<sup>33</sup>. Moreover the Policy also assigns to Campus FM the role that was previously fulfilled by FM Bronja, the cultural station of PBS Ltd. However the role, if any, of current private broadcasts needs to be articulated.

## 2.5. Television

### 2.5.1. Current broadcasting situation

The developments of the past two years have seen the launch of the digital terrestrial and digital cable television networks and services. The current situation is such that as network roll-outs are completed, the capacity needed to broadcast will no longer be so scarce in relative terms. In fact during the past year a fully commercial teleshopping station was licensed to broadcast over cable and another station has recently been licensed to broadcast over the digital terrestrial platform. Broadcasters now have access to increased transmission capacity. This increases competition for advertising revenue and viewership time.

Therefore whereas in a situation of scarce transmission resources it was in the public interest to assign rights to use frequency channels to broadcasters against a number of obligations in programme content delivery, a scenario with increased competition on advertising revenue and viewership time could undermine the financial viability of current broadcast stations unless they can operate in a fully liberalised commercial environment<sup>34</sup>. In such an instance current broadcasters, in view of their high viewership numbers are possibly best positioned to leverage favourable terms with network operators that could supplement their financial income. This aspect has to be taken into consideration when determining which implementation approach serves the best interest of the general public.

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<sup>33</sup> National Broadcasting Policy – Policy Decisions pg 25

<sup>34</sup> It is envisaged that for a commercial licence, content regulation would be kept to the minimum at Law.

### **2.5.2. Underlying policy considerations**

While none of the current private terrestrial broadcasters have a formally recognised public service remit they can collectively be seen to play an important part in the delivery of a number of general interest objectives such as the promotion of the national language, national culture and pluralism and there is therefore a general interest in ensuring their ongoing operation.

Consideration has also, however, to be given to the fact that there is a limit to how many such broadcast channels can be justified as being required in order to meet these general interest objectives. For example if we consider the current five stations to adequately provide for content that is in the national language then the classification of additional stations as providing a public service remit would not be justifiable on the grounds that they are required to promote the national language<sup>35</sup>.

The key considerations are:

- 1 Whether the public service remit is adequately provided by the public owned television channels namely TVM and channel 22;
- 2 Whether there is a general interest in ensuring a role for local private broadcasters by guaranteeing access to digital transmission capacity on both terrestrial and cable networks to local broadcast channels against an obligation to meet specific programming objectives; and
- 3 Whether there is a continued interest from private broadcasters to enter into such obligations in view of the changing scenario that develops with digitisation of the networks and the need to ensure commercial viability.

Table 1 presents the operating framework that would be established.

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<sup>35</sup> Universal Service Directive recital 43 and Article 31

<b>Public Broadcaster and Private Broadcast Channels meeting GIOs</b>	<b>Commercial Broadcast Channels</b>
<ul style="list-style-type: none"> <li>• guaranteed access to the terrestrial capacity via the reserved frequencies</li> <li>• protected by must-carry in order to ensure universal coverage</li> <li>• required to meet clearly defined and measurable broadcast content obligations as part of their general interest obligation</li> <li>• Have to be unencrypted to allow for access via any compatible set-top box without the need for subscription in the case of terrestrial transmissions</li> <li>• no copyright fee can be leveraged<sup>36</sup></li> </ul>	<ul style="list-style-type: none"> <li>• no guaranteed access to the transmission capacity</li> <li>• no must-carry protection</li> <li>• will need to negotiate access with one or more network providers. Payment for carriage and copyright fees will be applicable</li> <li>• minimum content regulation in line with Television without Frontiers Directive</li> <li>• have a choice in selecting both the platform and the network operator</li> <li>• have a choice in selecting the most appropriate transmission mode i.e. transmission in the clear, transmission encrypted but free to view, transmission as part of a pay service</li> </ul>

**Table 1 Operating Framework**

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<sup>36</sup> The concept is supported by the Copyright Act (Cap 415) Article 7(2); Refer also to Section 3.8.

### 2.5.3. Implementation scenario

The following implementation scenario is being put forward for consideration:

Private broadcasters take on a role in delivering the public service remit and a limited number of broadcast channels will be classified as meeting GIOs. Specific programme obligations will be assigned and the stations will be guaranteed access to transmission capacity. In line with the principles put forward in the National Broadcasting Plan<sup>37</sup> these licensed stations will continue to be financially independent of Government and will not be publicly funded.

Digital capacity will be reserved on specific frequency channels for the purpose of carrying the GIO broadcast channels at a predetermined bit rate.

The Broadcasting Authority would:

- 1 issue a call for expressions of interest for broadcasting licence applications open to private broadcasters wishing to obtain a broadcasting licence which includes a quantum of general interest obligations - GIO licence<sup>38</sup>.
- 2 Private broadcasters wishing to have fully commercial status will be issued with a Commercial Broadcast content licence<sup>39</sup>, which will entail lighter obligations than those established for broadcasting meeting GIOs. They would need to obtain access to transmission capacity through commercial negotiation with network operators.

The key features of this scenario are the following:

- GIO Broadcast channels will have guaranteed access to spectrum and to other infrastructures that may be subject to 'must-carry' obligations.
- GIO Broadcast channels will have added obligations linked to their public service remit.
- GIO Broadcast channels, because of their must-carry status, cannot negotiate copyright fees or any other possible income resulting from being on a pay tier, since by definition, they have to be transmitted on a free-to-air basis.
- The Broadcasting Authority would need to classify broadcast channels as meeting GIOs and monitor the delivery of the specific obligations.

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<sup>37</sup> National Broadcasting Plan para 12 states 'Stations will not generally be able to receive public funding, but there will be certain clearly defined exceptions.'

<sup>38</sup> The conditions of licence of all current analogue terrestrial broadcasters are such that they approach the conditions that would be imposed on broadcasters that meet GIOs. It is therefore justified to argue that these broadcasters are well aligned to fit in such a framework and would qualify as meeting GIOs as long as they undertake to abide by the requirements of such a licence.

<sup>39</sup> By way of example, the broadcasting licence issued to Melita Cable in respect of the Movie and Sports channels can be considered to fall under this classification.

#### **2.5.4. Rationale**

The basic rationale for regulation is to ensure the attainment of Government's policy objectives for a sector. Moreover, regulation must be proportionate and should be kept to the minimum necessary to achieve public interest objectives. 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 current situation is such that the digitisation of television networks is now well underway. The cable operator is currently transmitting over 70 channels on digital and this figure could increase substantially if analogue transmissions were to be switched off. In addition a terrestrial capacity for the transmission in digital of over 50 channels already exists.

Consideration has however been given to the need to ensure that a quantum of general interest content continues to be available in light of the change in the spectrum licensing process and a more competitive content market. The reservation of frequencies, for content meeting GIOs, guarantees that such content will continue to have access to the airwaves and any available cable infrastructure. In this respect a scenario where a limited number of privately owned stations play a role in the delivery of general interest obligations is deemed as being a feasible option. This is represented by the scenario proposed above.

#### **2.6. Radio**

With respect to radio transmissions, the possible launch of terrestrial digital audio broadcasting networks is anticipated some time in 2007. The implications of such a launch on the current FM radio transmissions were captured in a policy and implementation strategy document published by the Malta Communications Authority in August 2005. The policy does not reserve any T-DAB frequencies for broadcast channels that meet GIOs but allows for a possible applicability of the must-carry obligation to ensure the continued availability and to provide for universal coverage of broadcast channels meeting GIOs.

There are two main strategic differences between the migration towards digital television and digital radio, namely that:

1. The frequencies to be used for digital radio (T-DAB) transmissions are not the same as those utilised for FM transmissions.
2. There are no indications at present that analogue (FM) transmissions will need to be turned off in the foreseeable future.

Because of these fundamental differences between digital television and digital radio transmissions, the policy for terrestrial digital audio broadcasting does not establish a turn off date for analogue radio transmissions as has been done for television. There is therefore no immediate requirement to change any conditions of the current FM radio licences and any currently available frequencies<sup>40</sup> in the VHF band II will continue to be licensed for FM sound broadcasting.

The current radio broadcasting in FM comprises a total of 13 national stations as well as 27 permanent licences and 22 temporary licences for community channels. Given that these transmissions will continue to be available in the foreseeable future and given that the availability of hybrid receiving sets capable of receiving both analogue

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<sup>40</sup> A total of three frequencies are available for assignment to national stations.

and digital transmission ensures that universal reception of analogue stations will not be compromised, then the current high level of pluralism will be maintained. There is therefore no need to guarantee access on the digital network on the basis of GIOs.

A final consideration is that the imposition of any must-carry obligations on T-DAB will greatly hamper the potential of the relative networks to provide new and innovative services. Such a situation is not considered to be in the public interest.

In view of the above the need to impose must carry obligations, at least in the foreseeable future and as long as FM continues to be a viable transmission medium, is not considered as being justified.



## 3. ACCESS to TRANSMISSION CAPACITY

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### 3.1 Legislative framework

Access to transmission capacity on electronic communications networks is regulated by the Electronic Communications (Regulation) Act, (ECRA)(Cap.399). The ECRA establishes that networks used for the distribution of television and radio services are classified as electronic communications networks, and, in the case of terrestrial networks, it regulates both the assignment and use of spectrum whilst providing mechanisms and safeguards to give market players access to transmission capacity. The ECRA transposes the EU Framework for the Electronic Communications Sector. The following succinctly captures the key elements of each Directive as they apply to the regulation of television broadcasting platforms.

**Framework  
Directive  
2002/21/EC**

The Framework Directive recognises the links between content regulation and transmission network regulation and allows Member States to guarantee access of broadcast content to transmission networks in order to pursue GIOs. The Directive also requires Member States to make efficient use of radio frequencies.

**Authorisation  
Directive  
2002/20/EC**

The Authorisation Directive creates an exception with respect to the assignment of frequencies to broadcasters on the basis of objective, transparent, non-discriminatory and proportionate procedures for the purposes where special public interest considerations arise.

**Universal Service  
Directive  
2002/22/EC**

The Universal Service Directive allows for transmission capacity over radio and TV distribution platforms to be guaranteed to a broadcast content provider that meets GIOs in order to ensure universal coverage of the service.

The Directive allows for the establishment of must-carry obligations that are in the general interest and that are proportionate. Such obligations can be imposed on networks with a significant number of end-users.

Transmission capacity can therefore be assigned directly only for the purpose of carrying broadcast content meeting GIOs. Any assignment process has also to ensure that principles of transparency and non-discrimination are respected and that an efficient use of spectrum is made.

### 3.2 Policy direction

The Digital Broadcasting Policy, published in February 2005, reserves three frequencies, that are to be used for the carriage of local broadcast content providers that meet GIOs. Such a reservation carries implications from both a network and a broadcaster perspective.

As far as broadcasters are concerned, the policy document clarifies that where broadcast content would qualify as meeting GIOs on the basis of a set of clearly defined, pre-determined criteria, an assignment of rights of use of frequency

spectrum can still be made, although this would not equate to the exclusive use of a full frequency on the part of such broadcast content providers. The Policy therefore supports the direct allotment of digital transmission capacity over third party networks to qualifying broadcaster channels.

From a network perspective the rationale behind such a reservation was that, given the fact that two commercial network operators were going to be assigned a licence it would not make sense to eventually impose a must carry obligation on each one of these. Unencrypted, digital terrestrial transmission can be viewed by all digital terrestrial receivers without the need for any direct subscription, on the part of the viewer, with any single terrestrial commercial network. Thus any parallel imposition of a must carry obligation on both terrestrial networks would be useless duplication of transmission capacity, given that both are transmitting over the same territory. The feasible alternative was therefore to reserve three frequencies for broadcasting meeting GIOs and to assign these once the network designated to carry GIO broadcast channels was identified.

The GIO Policy implementation process is therefore perceived as a two-tier process, that:

- assigns the rights of use of frequency to a network operator, along with the related 'must carry' obligations; and
- allots transmission capacity on the network to broadcast content providers meeting GIOs.

A must-carry obligation will still be applicable to the cable network. In this respect, reference is made, in various parts of this Section, to the treatment of 'must-carry' provisions insofar as they apply to Cable networks.

### **3.3 Assignment of rights of use of the reserved frequencies and related must carry obligations.**

#### **3.3.1 Legal Provisions**

In order to ensure the universal reception of local broadcasts, article 40 of the Broadcasting Act, establishes a must-carry obligation for all locally licensed television broadcast channels<sup>41</sup> on both the cable network and on any other system capable of re-transmitting television broadcasting services.

At present the four licensed and operational broadcasting services are being retransmitted by the cable network under a must-carry obligation. These broadcasts are retransmitted in unencrypted form and are against a reception tier (entry level) subscriber fee.

The current must-carry obligation as established by article 40 of the Broadcasting Act is being revisited in the light of the Electronic Communications Networks and Services (General) Regulations, 2004 (ECNSR) (LN 412/2004) and relevant EU legislation<sup>42</sup> that establishes that any must-carry obligations may only be imposed on undertakings if they are in the general interest and if they are proportionate and

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<sup>41</sup> other than services devoted entirely to teleshopping

<sup>42</sup> Universal Service Directive article 31(1) specifies: *Member States may impose reasonable must carry obligations, ... on undertakings ... where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed here they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.*

transparent. Such obligations can be imposed on networks with a significant number of users.

In particular Regulation 51(1) of the ECNSR clearly states that:

*"The Authority may impose reasonable "must carry" obligations for the transmission of specified radio and television broadcast channels and services, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts 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..."*

Regulation 51(1) serves to give guidance as to the direction that needs to be followed in the assignment of the frequencies reserved for the purpose of carrying broadcast channels meeting GIOs.

### **3.3.2 Must carry on digital terrestrial networks**

The rights of use of the reserved three (3) frequency channels will be assigned to the terrestrial digital network operator that meets the relevant criteria that is, that a significant number of users of such a network use it as the principal means to receive radio and television broadcasts.

The digital terrestrial network that is designated as the 'must carry' network will be required to carry any PSB and GIO television channels at a pre-determined bit rate on a specific channel as may be directed by the Broadcasting Authority.

Capacity on these three frequencies can only be used by the relevant network operator for the purposes identified and will not be utilised for the carriage of commercial broadcast licence holders, retransmission or other commercial services.

Digital Terrestrial GIO transmissions will replace analogue free to air transmissions after analogue turn-off. Digital Terrestrial GIO transmissions will take place in unencrypted form and therefore receivable by anyone possessing a DTTV set-top box without any subscription being necessary.

### **3.3.3 Must carry on cable**

Melita cable is the only Cable TV operator in Malta. It has a national network which reaches some 95% of households and a penetration in the region of 76% of households. Melita is currently obliged to carry broadcast channels in line with Art 40 of the Broadcasting Act. Under Section 51(1) of the ECNSR it is reasonable to assume that it will be considered to have a significant number of subscribers<sup>43</sup> on its platform and the existing must-carry obligation will continue to apply, albeit under a different set of conditions. In addition, in view of the one to one relationship between the operator and the household (given the cabling and converter required) and given that remuneration for carriage will not be required subscriber payment for service will continue to be allowed. Must-carry channels will have to be on a reception / entry-level tier such that subscriber payment is kept to a minimum.

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<sup>43</sup>The cable network currently serves over 76% of households: Source <http://www.melitadigital.com/about.asp>

A must carry obligation on Melita would be imposed on both its analogue and digital network. However, as long as the analogue cable service continues to be provided to the public, the reception service need not be replicated on digital. Should Melita close off its analogue service, the equivalent of the reception tier will need to be introduced on its digital service.

### 3.3.4 Must carry on other platforms

TV transmission services in Malta are currently provided over Cable and Digital Terrestrial networks. The provisions of Section 51(1) of the ECNSR, as well as other relevant provisions of the Maltese Electronic Communications legislation, will apply to any other platform that eventually provides TV transmission services in Malta.

## 3.4 Allotment of transmission capacity to qualifying broadcast content

### 3.4.1 Proposed terms of allotment

Broadcast content qualifying as fulfilling a public service remit will be allotted capacity on the reserved frequencies.

The amount of capacity or bandwidth that could be allotted to each broadcast channel has been established after taking the following aspects into consideration:

- the level of definition or quality of the transmitted video;
- the compression technology used; and
- the type of content to be delivered.

The following bandwidth allotment is being considered. The allotment is based on MPEG-2<sup>44</sup> transport streams being used and transmissions being made in SDTV. The bandwidth also provides enough capacity for stereo audio and for the provision of ancillary facilities namely 4:3 and 16:9 (wide screen) transmissions, subtitles, teletext and interactivity.

Broadcast Programme	4.5 Mbits/s min to 6 Mbits/s max
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The above allotment of digital transmission capacity will apply to both the cable and terrestrial networks.

Network operators will be required to ensure that the established bit rates are adhered to and will be required to adopt a system of statistical multiplexing that bundles<sup>45</sup> the PSB and GIO broadcasts together to provide an output of approximately constant quality<sup>46</sup> on all channels.

<sup>44</sup> France will be using MPEG 4 for pay tv and MPEG 2 for FTA terrestrial transmissions

<sup>45</sup> The term "bundle" is taken to mean a group of services whose components (particularly video) are statistically multiplexed together.

<sup>46</sup> Video bit rate required for the same quality output varies and is dependant on the picture material.

Specifically for the terrestrial multiplexes, statistical multiplexing is to be used and up to 4 channels will be transmitted on each frequency channel.

The use of a full frequency bandwidth will be reserved for PBS Ltd. or a public entity set up for this purpose. This entity will be assigned the rights of use of one frequency channel which would carry TVM and Channel 22 and which would provide enough additional capacity for the possible introduction of new services such as new television channels, broadcast related services and other interactive services (such as e-Government services) that can be delivered through this technology platform. The available transmission capacity would also be able to carry any broadcasts that may be provided by the Broadcasting Authority<sup>47</sup>.

The remaining two frequencies will be reserved for broadcast channels that qualify as meeting GIOs.

### **3.5 High Definition (HD) television transmission**

In establishing the level of definition of transmissions, cognisance has been taken of developments in High Definition Television (HDTV), which is considered as the next frontier in TV transmission. The enhanced visual experience that HDTV provides is considered as an attribute that can serve to render the final package to the consumer a much more attractive one, thereby enhancing its value significantly.

However HDTV has also to be seen in terms of its impact on spectrum demand, cost of production and viewing, as well as state of the technology. Finally, having taken all into account, one has also to assess to what extent HDTV can fit with the current concept of broadcasting that meets GIOs, if at all.

The introduction of HDTV over the terrestrial platform using the currently adopted MPEG-2 compression will require a full frequency to transmit one television programme channel. This implies that the use of HDTV over terrestrial platforms would not provide any spectrum dividend in relation to analogue broadcasting and would not support multi-channel television. The situation is less problematic on cable and satellite networks given that available channel space on these platforms is more abundant than in the case of the terrestrial platform.

The high cost of consumer equipment capable of maximising the benefit of HDTV and the limited content in HDTV have so far resulted in a slow introduction of HDTV in Europe with commercial transmissions in HDTV now starting to appear on satellite and cable<sup>48</sup>.

On the technology front, work is currently underway on coding techniques such as the use of MPEG-4/AVC, which will reduce the bandwidth required for HDTV by approximately half that which is currently required using MPEG-2.

The proliferation of HDTV, especially on terrestrial networks, can be seen as a medium to long-term development.

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<sup>47</sup> Article 3(2) of the Broadcasting Act establishes the Authority's right to provide broadcasting services.

<sup>48</sup> A number of Pay-TV HD services by satellite were envisaged to begin in late 2005 and early 2006 (EBU Guidelines for the RRC06 – February 2005). HD platform launches in Europe began in 2005/06, possibly stimulated by the prospect of the 2006 World Cup, where initial HDTV transmissions started to appear on satellite (2005) and cable (2006). (OFCOM – The International Communications Market 2006).

In the context of GIOs it is not practical or justifiable in the general interest, to today allot capacity to broadcast content meeting GIOs, based on HDTV bandwidth requirements. Qualifying broadcast content providers will be allotted enough bandwidth to transmit in standard definition (SDTV), which is comparable to their current analogue product.

The situation will be revisited closer to the ATO date, which is set for the end of December 2010. At this time additional capacity should be available for assignment and the prevalent technology throughout Europe should be established. It is also estimated that a more significant number of homes will be installed with HD television sets at this time<sup>49</sup> and MPEG-4/AVC boxes will be readily available at affordable prices. In this respect the Government considers HDTV as an important component of any eventual policy relative to the Digital Dividend that should result following ATO.

The possibility that capacity for HDTV trials by Maltese broadcasters may be made available prior to ATO date is not discounted. However, this will depend on a host of factors, foremost among which the identification of adequate spectrum capacity for the purpose. The Government will, through the MCA, work with the sector in finding the right formula for such trials to take place. Although it is as yet early to establish any ground-rules it is envisaged that any such trials would be undertaken using MPEG-4 compression, which enables a higher degree of spectrum efficiency.

Any such Government initiative would not, of course, preclude the undertaking of trials and development of HDTV by commercial DTTV operators, possibly in collaboration with local broadcasters.

This prospective approach to HDTV is restricted to transmission by digital terrestrial means for the purpose of meeting GIOs. It does not have a bearing on the development of HDTV on a commercial basis, whether on terrestrial or on other platforms such as Cable or Satellite.

### **3.6 Must-offer obligations**

At present all local broadcasts are covered by article 12(A)(1)<sup>50</sup> of the Broadcasting Act that guarantees freedom of reception and retransmission.

#### **3.6.1 Broadcast channels with a public service remit**

An essential requirement for broadcast channels with a public service remit is that they are available universally therefore a must-carry obligation needs to be mirrored by a must-offer requirement in order to ensure that any platform that may be available, irrespective of its number of users, can carry these broadcasts.

#### **3.6.2 Commercial broadcast channels**

At present, service providers can negotiate commercial agreements in respect of foreign content. The extension of this possibility also to local commercial broadcast channels would provide additional opportunities for service providers to differentiate

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<sup>49</sup> EBU Technical Information I37-2005: 'We may assume that by 2010, Wide XGA receivers will be in wide use, and might be used in up to about 20 % of European homes'. Meanwhile an MCA-commissioned survey in 2007 found that less than 6% of Maltese households currently possess an HD-ready television set.

<sup>50</sup> Article 12A (1) states 'Except as provided in this Act and in any other law, freedom of reception and retransmission of radio and television programmes is guaranteed.'

their product from that provided by the competition. The possibility to provide content on a commercial basis could also serve to encourage the development of high quality and distinctive local broadcast channels.

The right for commercial broadcast content licence holders to authorise or prohibit the retransmission of a television broadcast shall apply in conformity with article 7(2) of the Copyright Act (Cap. 415)<sup>51</sup>.

### **3.7 Remuneration for carriage and copyright fees**

Network operators are authorised to establish and operate the network infrastructure and to provide services. Network operators can therefore either sell access to the physical transmission infrastructure, thereby allowing broadcast content providers to access end users, or they can act as a service provider in that broadcast content is selected to form part of their service offering.

The provision of access to network facilities clearly has a cost element to it and therefore when obtaining access to infrastructure it is reasonable to expect broadcasters to effect payment in respect of carriage costs. In the case when broadcast content providers agree to form part of an operator's service offering then payment is likely to be based on commercial negotiation which takes into account aspects such as transmission costs and copyright fees<sup>52</sup>.

In the case of the transmission of channels deemed as meeting GIOs, commercial negotiation is curtailed on the basis of social considerations. Ultimately the viewer should view such broadcast channels on a free-to-air basis<sup>53</sup>. Thus it is envisaged that neither network operator nor broadcaster should be in a position to leverage a position of relative power in order to elicit payment from the other party for services provided.

### **3.8 Envisaged must-carry arrangement for DTTV in Malta.**

#### **3.8.1 Key developments**

Three key developments over the past year or so have substantially conditioned the development of DTTV networks in Malta:

- The outcome of the RRC06 and the retraction by Italy on the previous coordination agreements, as a result of which Malta's immediate DTTV capacity was reduced from 19 to 9 frequencies and a fresh coordination process had to be undertaken.
- The GO takeover of Multiplus in February 2007.

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<sup>51</sup> Article7 (2) states '*The right to authorise or prohibit cable retransmission shall not apply when the transmission is made in Malta: (a) if the retransmission is in pursuance of a "must carry" requirement as per article 40 of the Broadcasting Act; and (b) if and to the extent that the transmission is made for reception in the area in which the cable retransmission may be received.*'

Article7 (3) states '*The right to authorise or prohibit the cable retransmission of a television broadcast shall be exercisable only through a collecting society.*'

<sup>52</sup> The Copyright Act (Cap. 415) provides the legislative background.

<sup>53</sup> The concept of free-to-air can change according to platform. Thus while in the case of Cable it is accepted that a transmission fee is to be paid by the subscriber, the same does not apply in the case of terrestrial transmissions, where there is no fixed access network that needs to be routed to each individual reception location.

- A clear drive on the part of the EU for more flexibility in frequency allocation and use, in exhorting Member States to move to a more technology and service neutral approach in spectrum allocation and assignment.

In the local context these three developments make for a scenario that is substantially different from the one that existed in 2005, when the DTTV 'umbrella' policy and strategy was adopted. These developments therefore point to the need to revisit that policy. In any event, given the fast-moving environment, such a periodic review is a foregone necessity.

On a higher plane, the MCA is currently assisting the Government in the finalisation of an overarching National Spectrum Policy and Strategy which, among others, addresses the need to adopt a more flexible approach to spectrum allocation and assignment, bearing in mind the need for continuity in existing services, as well as the protection of services deemed of a general interest (among which Broadcasting that meets GIOs). The National Spectrum Policy and Strategy, therefore strikes the balance between the need to encourage the development of technological innovation via a more proactive approach to spectrum allocation and assignment, and ensuring that the eventual transition to a new paradigm takes place with the least possible disruption.

The Government should shortly be adopting the National Spectrum Policy and Strategy for the coming years.

It is not the intention to dwell on the spectrum policy proposal, but nonetheless one needs to refer to it in light of the possible influence it can exert on the eventual review of the existing DTTV 'umbrella' policy, such that the latter cascades in a manner that is congruent with the principles enunciated in the overarching spectrum policy.

### **3.8.2 Impact on the development of further DTTV commercial networks**

The cumulative effect of the developments listed in 3.7.1 is such that an early deployment of a second commercial DTTV network is not likely.

Before the coordination process is finalised and the number of available (coordinated) frequencies, beyond the current nine (9), is known, any call for expressions of interest for a second network operator, in line with the 2005 DTTV 'umbrella' policy, cannot take place. This conclusion is premised on the assumption that Malta will respect ITU arrangements and not resort to unilateral action as Italy has done. Such a course of action on the part of Malta, in the event of unduly protracted negotiations, is not discounted. Ultimately, however, such action would still not guarantee protection of local transmissions from cross-border interference.

Technology advances and concomitant regulatory developments are such that, even in the event that an adequate number of frequencies is eventually available to Malta (presumably via a process of international coordination) it will probably be necessary to revalidate the DTTV policy with a view to eventually securing the best possible use of these frequencies.

When the DTTV policy was enunciated, there were no perceived competing services that were interested in utilising the UHF/VHF frequencies in question. The situation has now changed, with the possibility that undertakings interested in providing other services, such as mobile communication and mobile TV services potentially showing



interest in these frequencies. Any eventual policy realignment will therefore have to look at their potential alternative usage and related interest in the market.

While the prospective scenario does not have a direct impact on this proposed GIO policy it does bear on the position of GO in the DTTV market and the envisaged approach to the must-carry requirement in light of this reality.

### **3.8.3 Impact of 'Must Carry' on the existing terrestrial platform**

The aforementioned developments have resulted in 'de facto' giving GO a significant head start in the roll-out of commercial Digital Terrestrial platforms, given that a call for expressions of interest for a second DTTV operator cannot happen before:

- The re-coordination of frequencies with neighbouring countries, notably Italy, takes place and the necessary number of frequencies are secured for the purpose and
- A revalidation of the existing DTTV policy is finalised.

With a subscriber base in excess of 15,000, GO can be deemed as an undertaking providing an electronic communications network used for the distribution of radio or television broadcasts to the public where a significant number of its end-users use it as the principal means to receive such broadcasts. It is therefore reasonable to expect that GO will be declared as having a must-carry obligation with respect to DTTV broadcast channels meeting GIOs.

On the reasonable assumption that GO will have a Must-Carry obligation, GO will be expected to operate the frequencies earmarked for broadcasting meeting GIOs. GO will be required to carry out the necessary capital outlay and maintain the running costs of the operation. These additional frequencies will not only ensure that an adequate number of Maltese broadcast channels are secured a place in the DTTV milieu, but will also support GO in meeting its Must-Carry commitment.

There will not be a requirement for payment for spectrum rights of use of the GIO frequencies. This is in line with the Government's commitment to support broadcasting that meets GIOs.

The transmission of GIO channels will be unencrypted, that is, capable of being viewed over any compatible set-top box by the end-user, without any need for the latter to pay any fee for access to such broadcast channels.

## **3.9 Other aspects concerning carriage over third party infrastructure**

### **3.9.1 Quality of available infrastructure**

The cable network currently serves over 76%<sup>54</sup> of households. The network is considered to provide national coverage at an appreciably high standard of service.

The licence issued to GO in May 2005 (as subsequently revised) requires it to establish an infrastructure capable of providing national coverage by the end of 2007. Coverage is to be established in accordance with implementation guidelines for DVB terrestrial services<sup>55</sup>. Stringent system uptime requirements are also

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<sup>54</sup> <http://www.melitadigital.com/about.asp>

<sup>55</sup> Transmission aspects – 9.0 Network Planning (ETSI TR 101 190)

imposed thereby ensuring that all established networks are capable of delivering a quality service.

### **3.9.2 Level of service provided by the network operators**

Third party carriage should be subject to a service level agreement between the parties that establishes a predetermined quality of transmission.

It is therefore considered that the legislative framework provides the necessary safeguards for broadcasters to reach their viewers via a high quality transmission service.

## 4. Implementation Strategy

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### 4.1 General

The implementation strategy being considered will not affect current analogue transmissions, which will continue to be available on both the terrestrial and cable networks up to the analogue turnoff date (ATO), currently established for the end of 2010. Any current analogue broadcasting licences, which expire before ATO, will therefore be extended until this date, but not beyond.

Insofar as commercial broadcasting is concerned, the current legal framework can be utilised<sup>56</sup>. Any new licences to be issued by the Broadcasting Authority will be in respect of broadcast content only. Notwithstanding Article 40(1)<sup>57</sup> of the Broadcasting Act, and the proposals put forward in this document, these licences would not be granted the right to be carried under a 'must carry' obligation. An exemption to the application of Article 40 will be required in respect of any commercial broadcast content licences (as opposed to GIO broadcaster licences) for free to air broadcasts. Depending on the programme schedule an exemption from parts of article 13(2) may also be required.

Initial transmission in digital of broadcast channels classified as meeting general interest objectives will commence following conclusion of this public consultation process and the implementation of the following activities:

- 1 The drafting of the necessary updates to legislation to support the implementation of the identified policy measures.
- 2 The introduction of a broadcast content licensing process that incorporates the digital environment via a technology-neutral approach.
- 3 The notification of the digital terrestrial transmission network that must carry broadcast channels classified as meeting general interest objectives, and that will utilise the reserved frequency capacity to honour its obligation.
- 4 The setting up of the necessary transmission capacity by the notified transmission network.

The Malta Communications Authority will ensure that designated network operators abide by their must carry obligations. The Broadcasting Authority will licence broadcasters and will, upon their request, identify those broadcast channels that meet GIOs and allot them space on the reserved frequencies. The Broadcasting Authority will ensure that designated GIO broadcast channels abide by the obligations associated with such a designation.

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<sup>56</sup> One such licence has recently been issued.

<sup>57</sup> Article 40 (1) of the Broadcasting Act states 'Any person licensed to operate a cable television system or any other system for the retransmission of a number of television broadcasting services to the public shall distribute over such system all television broadcasting services other than services devoted entirely to teleshopping, licensed in Malta and receivable terrestrially and free of charge by the general public in Malta.'

## 4.2 Legal framework

### 4.2.1 Electronic communications sector

The regulatory framework applicable to the electronic communications sector was overhauled in 2004, with the enactment of ECRA, providing a technology neutral framework that caters for continued technological development. The ECRA, along with the related subsidiary legislation, is harmonised with the European Union framework for the sector and adequately regulates all the policy areas under consideration. No significant legislative changes are therefore required in support of the policy direction being put forward for consideration.

Another piece of legislation that is relevant to this topic is Legal Notice 167/2001, which is a remnant of the pre-2004 regulatory framework. A number of provisions of this Legal Notice have been retained insofar as they apply to broadcasting matters. Notable among these are those provisions relating to the licensing of Cable networks' own broadcast content (the term 'Cable networks' is taken to include terrestrial networks) and other related provisions. Regulation of broadcast content transmitted over cable networks falls under the Broadcasting Act. The repeal of the relevant provisions of LN167/2001 will serve to clarify the rights and obligations of network operators in their role as broadcasters, to the effect that these rights and obligations are aligned to those of all other broadcasters.

### 4.2.2 Broadcasting and audiovisual sector

The last major legislative change in the audiovisual sector came in 1991 with the introduction of the Broadcasting Act, which made provision for the liberalisation of both radio and television services and opened the sector for private radio and television stations, including multi-channel cable television. The white paper that preceded the Act and the licensing regime established by the Act are based on a scenario that is characterised by the sole use of analogue transmission technology.

In February 2003 an expression of interest by the private sector to establish a multi-channel digital television service was received. In view of the fundamental changes that the new technology would introduce, Government embarked on the articulation of the Digital Broadcasting Policy. In consideration of the ATO date established therein, the Broadcasting Authority has not issued any further analogue television licences and both the National Broadcasting Plan published in 1991 and the Broadcasting Act need to be revised to address the realities of today's broadcasting environment.

#### 4.2.2.1 National broadcasting plan

The general principles that form the basis of the National Broadcasting Plan continue to be valid, however, as stated, an update of the plan with respect to television and radio broadcasting policy is now overdue. The following would need to be captured in a revised plan:

#### *Television*

1. Pluralism in Maltese television will continue to be safeguarded.
2. Broadcasts will be allowed on both cable and terrestrial networks and on any other network that may be established.
3. Broadcast licences will be issued to the private sector for broadcast channels meeting GIOs and for commercial broadcasts.

4. Licences for commercial broadcast content will be subject to the minimum of regulation<sup>58</sup> consistent with the public interest and as reflected in local legislation.
5. Licences for broadcast channels qualifying as meeting GIOs will be subject to the minimum of regulation consistent with the public interest and as reflected in local legislation and to additional programme content obligations as part of their remit.
6. The licence for the public service broadcaster will be subject to the minimum of regulation consistent with the public interest and as reflected in local legislation and to the conditions of the public service obligation contract.
7. Digital capacity will be made available to the Broadcasting Authority for the carriage of broadcast channels designated by it as having a public service remit.
8. The Broadcasting Authority will be responsible for allotting the bandwidth that will carry each licensed public service and GIO broadcast channel.
9. Commercial broadcast content licence holders will need to obtain access to transmission capacity on licensed television networks. Stations will need to notify the Broadcasting Authority with the details of the network operator and the transmission frequency as part of the licensing process.

#### *Public service broadcasting media*

1. Malta's public service broadcasting media will now include:
  - (a) PBS Ltd., with its television channel (TVM) and two radio services;
  - (b) The educational television channel (Channel 22);
  - (c) Radju Malta, Radju Parlament and The education radio channel (Campus FM);

#### *General interest broadcasting media*

1. This category is made up of private television stations that take on the obligation of broadcasting a quantum of programmes of general interest and that are considered by the National Broadcasting Policy to be part of the remit of a public service station.

These broadcasts will need to complement the PBS Ltd offering and play a substantial role in delivering all or part of the following:

- (a) quality programming across the full range of public tastes and interests;
- (b) programming of an educational and cultural nature;
- (c) news and current affairs programming; and
- (d) a comprehensive and accurate information service in the interests of a democratic and pluralistic society.

Broadcasting licences issued by the Broadcasting Authority will establish the specific general interest obligations of each station.

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<sup>58</sup> These will be consistent with the TWF Directive

#### 4.2.2.2 Broadcasting Act

The following sections of the Broadcasting Act will need to be amended in order to implement the policy considerations being put forward in this consultation:

##### *Article 10 – Issue of broadcasting licences.*

1. To introduce two classes of television broadcasting licences applicable to private stations namely a General Interest Broadcast Content Licence and a Commercial Broadcast Content Licence.
2. To enact regulations in respect of the application process for television broadcasting licences.
3. To amend the provision that restricts the genre of a second station, that is owned by the same entity, to teleshopping. The new provision would still allow for a maximum of two stations but with no restriction on the second station with respect to genre. The new provision would apply to TV as well as to radio station ownership.

##### *Article 11 – Considerations to guide Broadcasting Authority in the issuance of broadcasting licences.*

1. To revise the criteria for the assessment of applications for licences in order to take into account the two television licence categories and to remove references to the transmission infrastructure which will no longer form part of the broadcasting licence.

##### *Article 13 - General provisions as to the provision of broadcasting services in Malta and regarding the Authority's duties in respect thereof.*

1. To take into consideration the two new classes of television broadcasting licences.

##### *Article 18 - Broadcasting frequencies.*

1. To remove the reference to the assignment of a full frequency channel as part of the broadcasting licence.
2. To require applicants for Commercial Broadcast Content Licences to notify details of the network operator, carrier frequency.
3. To cater for the allotment of transmission capacity on a carrier frequency in respect of Public Service and GIO Television Broadcasting Licences.

##### *Article 23 - Submission of Programme Schedules for Authority's approval.*

1. A clause similar to the one that exempts radio services from the subarticles (excluding subarticle 1) of this article will be introduced to exempt commercial broadcast content licence holders from requiring prior approval by the Broadcasting Authority for their programme schedule. Submission of the programme schedule to the Broadcasting Authority will however still be required.

##### *Article 40 - "Must Carry" obligations.*

1. To be removed given the overlap with the must-carry provisions contained in the Electronic Communications legislation, as well as its obsolescence, in light of the change in criteria with respect to the establishment of must carry obligations.

*First Schedule - Purposes for which provision is to be made in licences and contracts for the provision of broadcasting services.*

1. To be revised to cater for reduced regulation in respect of Commercial Broadcast Content Licences.
2. To remove reference to transmission infrastructure and assigned frequencies from the broadcasting licence.

*Second Schedule - National Broadcasting Plan.*

1. To be amended to reflect the proposals put forward under this Section.

### **4.3 Broadcast content licensing process**

Private entities interested in obtaining a television broadcasting licence will be able to apply for either a Commercial Broadcast Content licence or a General Interest Broadcast Content licence.

#### **4.3.1 Commercial broadcast content licences**

There will be no limitations on the number of commercial licences<sup>59</sup> that can be issued by the Broadcasting Authority. However presently article 10(6)(a) of the Broadcasting Act establishes a maximum of two broadcast content licences that may be issued to the same entity. Licences will be strictly in respect of content and will not include licensing of the transmission infrastructure. Entities will be required to enter into commercial negotiations with authorised network operators or service providers in order to obtain access to transmission capacity. Applicants will be required to notify, to the Broadcasting Authority, the relevant details in respect of the network operator and the specific frequency on which the broadcast channel will be transmitted.

Applications will be assessed to determine that entities are in a position to establish and operate a viable station that can meet the requirements as established by law. Assessment will therefore take into consideration the economic potential and viability of the station and the genre and source of the production material.

#### **4.3.2 Broadcast licences with a public service remit**

One full frequency will be allocated for the carriage of Public Service Broadcasts and for the purposes identified in section 3.4.1.

The remaining transmission capacity has been reserved for a maximum of eight General Interest Broadcast content licences. The stations can be both generalist and niche stations and will need to meet stringent requirements both in terms of

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<sup>59</sup> This is, nonetheless subject to the physical space that is available, at any point in time, on transmission networks.

programming quality as well as in terms of the specific general interest objectives that they fulfil. Only one General Interest Broadcast content licence will be issued to the same entity. An entity may however be issued with one additional Commercial Broadcast content licence.

This arrangement is based on the premise that three frequencies are reserved for broadcasting that meets GIOs. However the amount of frequencies currently coordinated is two. The third frequency will be made available when the coordination process with neighbouring countries is finalised.

Stations will be expected to devote a significant portion of their programming time to programmes that qualify as being of general interest, that is programmes that qualify as meeting CPSOs and EPSOs. The National Broadcasting Policy establishes that the PSB is required to dedicate between 50 and 55% of its programming time to programmes of general interest. A broadcast channel qualifying as meeting GIOs will be required to devote not less than 35% of its programming time to programmes of general interest.

Generalist stations would need to provide a spectrum of programme content that cuts across the categories listed below. Stations that address a particular audience niche will also be considered particularly if they provide added value and as long as the content can be classified as one of general interest (for example, education) on the basis of distinct evaluation criteria.

The following are the evaluation criteria that are being considered:

**1 General - quality programming cross the full range of public tastes and interests.**

- a) Financial allocation for programme generation;
- b) The range of subject matter. This would include:
  - (i.) programmes that focus on the island of Gozo and in particular that highlight Gozitan society, culture and way of life;
  - (ii.) programmes that have children as their principal audience;
  - (iii.) drama programmes in Maltese with preference being given to original drama in Maltese;
  - (iv.) programmes that focus on Maltese communities abroad.
- c) The number of new and innovative programmes;
- d) Target audience share;
- e) Measures such as subtitling and sign language;
- f) The variety of production approaches to be used such as coproductions/out sourced productions/shared material; and

**2 Programming of an educational and cultural nature.**

Amount and scheduling of programmes of an educational and/or cultural nature



- a) Range of subjects covered;

Appropriate weighting will be given to content such as:

- (i.) Educational programmes
- (ii.) programmes that enhance the public's knowledge and appreciation of Maltese heritage and history;

programmes that enhance the public's knowledge and appreciation of the arts particularly Maltese arts;

- b) Type and size of audience targeted;
- c) Percentage of programmes raised with the collaboration of educational institutions;
- d) Percentage of programmes and total production hours in the Maltese language; and

### **3 News and current affairs programming.**

- a) Quality of the news policy adopted by the broadcast channel;
- b) Sufficiency of news budget;
- c) Comprehensiveness of news schedule;
- d) Appropriate staffing to support the necessary news gathering, and the provision of in-depth analysis;
- e) Arrangements for gathering international news; and
- f) Amount and scheduling of current affairs programmes.

### **4 A comprehensive and accurate information service in the interests of a democratic and pluralistic society**

- a) Amount and scheduling of informative programmes;
- b) Range of subjects covered;
- Appropriate weighting will be given to:
- (i.) Discussion programmes dealing with topics of a social, cultural, educational, environmental, economic, industrial or political nature;
- c) Programmes dealing with religious topics;
- d) Measures in support of the presentation of a wide range of diverse opinions or perspectives; and
- e) Measures in support of the presentation of public views.

Delivery of the programme schedule that constitutes the general interest obligation for each station will be a condition of licence.

The Broadcasting Authority will have the authority to refuse applications for General Interest Broadcast content licences where specific general interest objectives are adequately covered by already licensed stations even if transmission capacity is available.

The Broadcasting Authority will carry out a yearly assessment of the programme schedules of General Interest stations to ensure that licence obligations continue to be met.

#### **4.4 Must-Carry obligations**

The MCA will impose must-carry obligations on the terrestrial network that has a significant number of end-users who use it as their primary means of television reception. It is envisaged that the obligation will be imposed on GO.

The Digital Terrestrial Operator that is designated as having must-carry obligations will be required to set up the operation within a stipulated timeframe. The implementation time-frame will take into account the envisaged time required for the changes to the BA legal provisions, as well as the evaluation process for broadcast channels meeting GIOs, to take place. These aspects have been addressed in 4.2 and 4.3 above. Ideally the network elements should be operational before the legal and procedural aspects are finalised.

The following frequencies, which have been reserved for broadcasting that meets GIO, will be assigned to the must-carry Digital Terrestrial Operator:

Channel 5 VHF  
Channel 66 UHF

A third frequency will be assigned to the must-carry Digital Terrestrial Operator, for the purpose of broadcasting that meets GIOs, following the successful completion of the coordination process with neighbouring countries.

The allotment of frequency space to broadcast channels meeting GIOs will occur after the finalisation of the necessary BA legal provisions and the evaluation process for broadcasting that meets GIOs.

#### **4.5 Key stakeholders**

The following entities are considered to have an active role to play in the implementation of the strategy.

- The Ministry for Competitiveness and Communications as the Ministry responsible for policy regarding the regulation of electronic communications networks and services.
- The Ministry for Tourism and Culture as the Ministry responsible for broadcasting policy;
- The Ministry for Information Technology and Investment (MITI) responsible for the operations of the national broadcaster namely Public Broadcasting Services Ltd;
- The Ministry of Education, Youth and Employment responsible for the Education Channel.

- The Broadcasting Authority responsible for regulating sound and television broadcasting services and for issuing broadcasting licences;
- The Malta Communications Authority responsible to regulate electronic communications and manage spectrum.
- Public Broadcasting Services Ltd., as the Government owned company responsible for the provision of public broadcasting;
- Current terrestrial analogue broadcasters who will need to migrate to digital;
- Network operators and service providers who will provide access to local commercial broadcast content licence holders.
- The viewing public

#### **4.6 Next steps**

It is anticipated that the public consultation process in respect of broadcast channels meeting GIOs will be concluded by the end of 2007, followed by the formalisation of Government's policy position by the 1<sup>st</sup> quarter of 2008. At this time the process for assigning the rights of use of the reserved frequencies, starting with the designation of the must-carry operator, will be kicked off with assignment targeted by the 2<sup>nd</sup> quarter of 2008. Legal drafting of the amendments to the Broadcasting Act will commence immediately after publication of Government's policy position with passage through parliament envisaged in the 2<sup>nd</sup> Quarter 2008. The selection and allotment process will commence immediately thereafter.

## **5. Consultation Framework**

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The MCA and the BA invite comments from interested parties regarding this Consultation Document. The consultation period will run until 12.00pm on Friday the 7<sup>th</sup> December 2007.

Whilst this is a joint MCA/BA consultation document it is deemed practical to have a single contact point throughout the consultation process. The MCA will therefore be receiving responses on behalf of the two entities. In this respect respondents are kindly requested to send comments to:

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## **APPENDICES**

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### Appendix A - Public service obligation for PBS Ltd.

Extract from the National Broadcasting Policy – April 2004

The core public service obligation is being defined as the transmission of:

1. regular daily news bulletins in Maltese, with the main TV news bulletin not being of a lesser duration than 20 minutes and at least a once daily TV news bulletin in English. Furthermore at least one of the TV news bulletins in Maltese has to provide facilities for the hearing impaired. The main news bulletin shall include both local and international news;
2. regular daily news bulletins on at least one of the radio stations that PBS operates with at least one bulletin thereof being in English;
3. regular daily bulletins covering local sporting events of a current nature and at least one weekly programme covering local sports. It shall, however, be understood that events of a national character (e.g. The Small Nations Games) and/or particular events which, by their nature, are one off shall require separate funding from Government;
4. programmes in adherence with the Constitutional or legal requirements imposed on PBS;
5. the televised transmission of one-off parliamentary debates;

The extended public service obligation programmes are programmes which would normally be defined as not commercially viable but important to ensure the cultural, social and educational development of society at large and to enable sections of society that would not normally have access to television broadcasting to acquire the space to do so.

1. the transmission of events of a national character as determined from time to time by Government;
2. the regular transmission on radio of all parliamentary debates;
3. public service announcements according to a pre-determined quantum established in a co-funding policy to be established in the Public Service Obligation Contract;
4. current affairs programmes and discussion programmes dealing with topics of a social, cultural, educational, environmental, economical, industrial or political nature;
5. programmes dealing with religious topics and the transmission of Mass on Sundays and some holy days of Obligation ;
6. programmes that have children as their principal audience;
7. drama programmes in Maltese with preference being given to original drama in Maltese;
8. programmes that are cultural in nature but especially those that enhance the Maltese language, the arts and culture; as well as programmes of classical music

9. programmes that are focused on Gozo and in particular that highlight Gozitan society, culture and way of life;
10. programmes that focus on Maltese communities abroad;
11. general information programmes;
12. programmes that are educational in nature;

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- EBU Technical Information – I43-2004 PRELIMINARY INFORMATION ON BROADBAND TELEVISION
- EBU Technical Information I37-2005: Guidelines for the RRC06 – February 2005
- EBU Presentation at CEPT Barcelona 2005 - Broadcasting Regulatory Policies
- EBU Position Paper on the Commission Proposal for a Directive on services in the internal market – December 2004
- EBU Technical Review – Digital Switchover – No 302 ( April 2005)

### **UK Documentation**

- UK Communications Bill – The Policy  
<http://www.ofcom.org.uk/>
- Ofcom review of public service television broadcasting Phase 2 - Meeting the digital challenge <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/>
- Ofcom public consultation – Pay TV channels on multiplexes B, C and D – Proposal to remove the 'free to air only' requirement.
- Ofcom public consultation – Public Service Broadcasting – Statements of programme policy and self-assessment reviews.
- Ofcom – Radio – Preparing for the Future

### **Norwegian Documentation**

- Norway TV2 Licence Terms  
(<http://odin.dep.no/odinarkiv/norsk/nedlagt/kd/2000/eng/018041-200004/dok-bu.html>)

### **Swedish Documentation**

- Comments from TV4 AB (Swedish private commercial television station) on the overview of the Television without Frontiers Directive July 2003

### **Other**

- Prague Declaration (1994) of the Council of Europe.
- <http://www.melitadigital.com/about.asp>

## Glossary

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### **Bandwidth**

Bandwidth is directly proportional to the amount of data transmitted or received per unit time and represents the bit rate at which data flows over a given transmission path.

### **Broadcast**<sup>60</sup>

The initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of radio or television programmes intended for reception by the public but does not include retransmissions and communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;

### **ECRA**

Electronic Communications (Regulation) Act Cap. 399

### **Free-to-air broadcasting** <sup>61</sup>

Means broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without paying in addition to the modes of funding of broadcasting (such as license fee and/or the basic tier subscription fee to a cable network). 'Free to air' television covers transmission by cable, satellite and terrestrial technologies but excludes services to which access is limited by conditional access systems such as Pay-TV Services.

### **Free-to-view broadcasting**<sup>66</sup>

Means broadcasting on a public or commercial channel of programmes that may require a one-time activation fee but places no additional cost upon viewers thereafter. Usually this takes the form of an encrypted broadcast that needs an access card in order to be decrypted and viewed. 'Free-to-view' services allow broadcasters to abide by copyright licensing agreements that restrict free access to a subset of their total broadcast area, such as an individual Member State.

### **MCA**

Malta Communications Authority responsible for the regulation of electronic communications and for assigning rights of use of radio frequencies.

### **MPEG**

Moving Picture Experts Group is the name of a family of standards used for coding audio-visual information (e.g., movies, video, music) in a digital compressed format.

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<sup>60</sup> as defined in the Broadcasting Act Cap 350

<sup>61</sup> the A to Z of Audiovisual and Media policy <http://europa.eu.int/comm/avpolicy/>

## **MPEG-2**

A codec standard used for the source coding of digital video signals for broadcast transmission systems such as satellite, terrestrial and cable.

## **Multiplex**

Digital bitstream, carrying several digital programs or services that are 'multiplexed' together and transmitted on a single communications carrier channel.

## **Public Service Broadcaster<sup>66</sup>**

Public Service Broadcaster means a broadcaster with a public service mandate. The definition of this mandate falls within the competence of the Member States, which can decide at national, regional or local level. Such a mandate would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity. The public broadcaster is largely non-commercially funded (either directly through license fees or financial support from the state or indirectly through privileged access to spectrum).

## **Terrestrial Television**

Wireless television transmissions using radio frequencies and that can be received with rooftop or indoor antennae.