

27th November 2007

Report and issuance of a Directive following consultation on the proposed issue of a directive on payment of postage and postal identifier under the Postal Services (General) Regulations

Consultation and Report

In accordance with the requirements of regulation 43 of the Postal Services (General) Regulations¹ the Malta Communications Authority (the 'Authority') consulted with the universal service provider and other stakeholders whom the Authority considered as having an interest. The only respondent to this consultation was Maltapost plc ('Maltapost').

Maltapost questions why in order to enable the Authority to effectively monitor the provision of its services, it should in all instances ensure that all postal articles it delivers bear some form of postal identifier. Maltapost further argues that such a measure is not warranted to protect the interests of users of postal services it provides.

Maltapost does not however give any valid reason at law why it should not be required to have a postal identifier. Maltapost in particular fails to explain how the Authority or a user of its services can establish with certainty that a postal service is provided by Maltapost if on the envelope itself there is no postal identifier whatsoever.

Maltapost asks why the Directive is only addressed to it. The Authority agrees that similar requirements should be onerous on all postal operators and is in this regard submitting proposals to the competent authorities to implement similar requirements to all postal operators.

In the present context however the measures in this Directive can only be addressed to Maltapost once the Directive is being issued in accordance with regulation 43 of the Postal Services (General) Regulations. In accordance with the aforesaid regulation Maltapost as the universal service provider is being required to amend a scheme it presented and to issue another scheme. A careful reading of this regulation reveals that the Authority in this context may only issue directives addressed to the universal services provider. At present Maltapost is the only authorised universal service provider operating in the postal services sector. Therefore the Directive cannot be extended to postal operators other than the universal service operator. The Authority in the circumstances considers that there is no breach of article 4(3)(d) of the Malta Communications Authority Act.

The Authority therefore considers that it is justified in issuing the Directive in question.

¹ As per Legal Notice 328 of 2005.

"Directive No. 3 of 2007

Directive of 2007 on the payment of postage and postal identifier

The Malta Communications Authority after having consulted in accordance with regulation 43 of the Postal Services (General) Regulations and in accordance with its powers under this regulation, has made the following Directive.

Title and application

1.1 The title of this directive is the Directive of 2007 on the payment of postage and postal identifier.

1.2 The provisions of this Directive shall come into force on the date of its publication on the website of the Malta Communications Authority.

Definitions

2.1 Unless otherwise provided in this directive, the provisions of article 2 of the Postal Services Act (Cap. 254 of the Laws of Malta) and of regulation 2 of the Postal Services (General) Regulations (Legal Notice 328 of 2005) shall apply to this Directive.

2.2. For the purposes of this Directive:

the word "Authority" means the Malta Communications Authority.

the words "the Regulations" unless the context requires otherwise, refer to the "Postal Services (General) Regulations".

Considerations

3.1 Since at least the beginning of this year, Maltapost plc has been delivering a substantial amount of postal articles without any stamp, postal mark indicating payment of postage and, or fees on a postal article, or any other mark indicating that the provision of the postal service is being made by Maltapost plc. Maltapost plc is not contesting that it is factually engaging in such a practice.

3.2 The Authority considers that whilst progress has been registered following the submission to it by Maltapost plc of a proposed scheme entitled "Posting and Delivery Requirements Scheme", Maltapost plc has failed to address the requirement that this Scheme should also include provisions whereby a postage stamp or mark is printed, impressed, embossed or otherwise marked on all postal articles delivered by Maltapost plc to demonstrate payment or arrangement for payment of postage with Maltapost plc. The Authority therefore considers that the provisions of the aforesaid Scheme as proposed should be retained subject to the inclusion of a clear provision that ensures compliance with the above requirement.

3.3 The Authority considers that Maltapost plc as the universal service operator is required to ensure that it has in place an efficient service for the delivery of postal articles and that it is clearly identifiable as the provider of that service. The Authority considers that consequently, in addition to the demonstration of payment, there must be on each postal article delivered by Maltapost plc, a clear indication that unequivocally identifies Maltapost plc as the provider of the postal service in question.

3.4 The Authority firmly believes that the continuance of the present practice by Maltapost plc of not having in all instances a clear indication demonstrating that it is Maltapost plc which is providing the postal service, seriously undermines the effective monitoring by the Authority of compliance by Maltapost plc with its legal obligations in relation to the delivery of postal articles. Moreover such a practice is of detriment to users of the postal services provided by Maltapost plc. The Authority considers that such a practice effectively impairs users who may have cause for complaint about a postal service provided by Maltapost plc, in pursuing their complaints given that users will not in all instances be able to readily establish that it was Maltapost plc which provided the postal service in question.

3.5 The Authority considers that notwithstanding its request to Maltapost to desist from its present practice, Maltapost has to date continued with this practice thereby undermining the effective exercise of the regulatory functions of the Authority in monitoring the postal services provided by Maltapost.

Directive

4.1 The Authority therefore directs Maltapost plc to have in place within thirty days of the issue of this Directive the following:

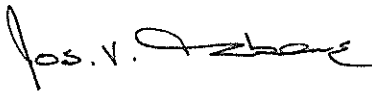
4.1.1 an amended version of its proposed Scheme entitled "Posting and Delivery Requirements Scheme", whereby it effectively implements to the satisfaction of the Authority, a provision or provisions that clearly and unequivocally require that a postage stamp or mark is printed, impressed, embossed or otherwise marked on all postal articles delivered by Maltapost plc to demonstrate payment or arrangement of payment of postage with Maltapost plc;

4.1.2 a postal scheme whereby each postal article delivered by Maltapost plc has a name, logo, stamp, postmark or design that is affixed to, impressed or printed on each postal article delivered by Maltapost plc and which clearly indicates the date which Maltapost acknowledged receiving each postal article for processing and any other relevant information, and identifies Maltapost plc as the postal service operator responsible for the delivery of that postal article.

Warning that administrative fines may be imposed in case of non-compliance

5. If on the lapse of thirty days from the issue of this Directive, Maltapost fails to comply with the requirements of this Directive, the Authority will then consider imposing an one off administrative fine of five thousand Maltese Liri and a daily administrative fine of two hundred Maltese liri. These fines will commence as from the lapse of the date when Maltapost is required to comply with this Directive. The daily fine will continue to accrue until such date as Maltapost complies with the requirements of this Directive to the satisfaction of the Authority.

6. This Directive is being issued without prejudice to any other measures that the Authority has taken or may take with regard to the subject matter dealt with in this Directive.



Joseph V. Tabone
Chairman"