

Regulatory Direction on Specific Aspects of the Universal Postal Service

Overview of Responses to Consultation and Decision Notice

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Executive Summary

The Malta Communications Authority's (MCA's) primary aim with regard to the regulation of the postal sector is to safeguard the provision of an efficient, affordable, high quality universal postal service together with the promotion of fair market conditions leading to effective competition between operators.

The gradual liberalisation of the postal sector, leading to full market opening by the end of December 2012, coupled with the increased preference of customers for different forms of postal services, has started to see the entry into the postal market of postal service providers operating within the scope of the universal postal service, in addition to MaltaPost Plc (hereinafter referred to as MaltaPost) as the only designated universal service provider (USP).

A consultation process initiated in July 2010¹ raised a number of issues related to the effective regulation of the postal sector, and the need to ensure that the universal postal services are safeguarded in the transition to full market opening and beyond. A number of remedies were therefore proposed to address these issues.

The issues raised in the consultation paper related to: the need for further clarity and a clear definition of the services which fall within the scope of the universal service; further clarity on the role of the bulk mail service as a universal service; the price control obligations on the USP to ensure, amongst others, a smooth transition to a fully liberalised market and a competitive environment; and the need for a clear definition of what is an express mail service (as a type of service that falls outside the scope of the universal postal service).

MaltaPost and the Express Association of Malta responded to the consultation paper.

After taking into consideration the responses received to the consultation paper, the MCA has, in this decision notice, established its position and formal decision on the above-mentioned issues. This decision notice also sets out the specific postal services that make up the universal postal service in Malta. Currently MaltaPost, as the only licensed USP in Malta, is required to provide these postal services in Malta under its universal service obligation (USO).

The following is a summary of the MCA's decisions presented in this document:

- Postal services falling within the scope of the universal service include:
 - (1) Services which fall within the description of a service forming part of the universal postal service.
 - (2) Services which fall within the description of a service forming part of the universal postal service, but collection and delivery are not provided on each of the days required for services forming part of the universal postal service, or the service is available only to a particular category of persons, or the service is not provided for nationwide, or the service is not provided at an affordable uniform price, or the service provides for the collection of a postal article at a place specified by the sender of the postal article, or the service provides for the delivery by appointment feature, or the service

¹ Refer to: <http://www.mca.org.mt/filesystem/pushdocmgmtfile.asp?id=1434&source=3&pin=>

provides for the postage to be chargeable and paid in a form or manner different from that associated with the universal postal service.

- (3) Services which, in the opinion of the MCA, are of a kind that, from the point of view of users of postal services, display interchangeability with a service forming part of the universal postal service.
- In line with legislation the MCA is defining the priority bulk mail product as part of the specific set of postal services that constitute the universal postal service in Malta.
 - Any postal service offered by the USP, which falls within the scope of the universal postal service, will be subject to *ex-ante* tariff regulatory provisions until competition has developed sufficiently in the provision of these services. Embedded in this decision is the ability for the USP to seek to remove certain services from price control, to the extent that it believes that competition has developed in the provision of these services.
 - An express mail (courier) service is being defined as a service consisting of the faster and more reliable acceptance/collection, handling, transportation and distribution of postal articles when compared to that of the fastest standard category of the basic universal postal service. In addition to greater reliability and speed, an express mail service must also include a set of supplementary characteristics.

This Decision Notice is effective from the date of publication. The MCA will, on an ongoing basis, monitor the robustness of this decision and may make periodic adjustments as necessary should circumstances warrant.

1. Introduction

The universal postal service encompasses the minimum set of postal services (interchangeably referred to as postal products) to be provided in Malta at an affordable price for the benefit of all users. Ensuring the provision of a universal postal service that meets the needs of all postal users, in terms of its nature and quality, is one of the MCA's key objectives vis-à-vis the postal sector. At the same time the MCA needs to promote fair market conditions conducive to effective competition between operators.

The European Postal Services Directive² places the responsibility on Member States to meet certain minimum requirements in the provision of the universal postal service (one collection from appropriate access points and one delivery to all addresses, every working day, in respect of postal articles and packages up to 20 kilograms, together with the services for registered and insured items, all at affordable prices).

The Postal Services Act (Cap. 254 of the Laws of Malta)³ and the Postal Services (General) Regulations⁴ define the minimum requirements and the general characteristics of the postal services that make up the universal postal service in Malta.⁵ A description of the specific postal products which MaltaPost, as the only licensed USP in Malta,⁶ is required to provide as a universal postal service are listed in **Appendix 01**.⁷ MaltaPost's licence also sets out the universal postal services (and their respective prices) to be provided in Malta under its USO.⁸

The gradual liberalisation of the postal sector leading to full market opening by the end of December 2012, coupled with the increased preference of customers for different forms of postal services, has started to see the entry into the postal market of postal service providers offering services (however only in specific niche markets) within the scope of the universal postal service in addition to MaltaPost.⁹

² Directive 2008/06/EC of the European Parliament and the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

³ Refer to <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8748&l=1>

⁴ Refer to <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9662&l=1>

⁵ Refer to article 17 of the Postal Services Act. Also refer to PART III of the Regulations.

⁶ Refer to Postal Services (Designation of Universal Service Provider) Order S.L. 254.13 whereby MaltaPost is designated as the USP with the obligation to provide all the universal postal services required by or under the Postal Services Act.

⁷ Competition between MaltaPost and new operators in some markets and the transition to full market opening by the end of December 2012 has made it increasingly important to be able to identify which services the USP is obliged to provide. **Appendix 01** includes a description of the services provided in Malta as the universal postal service, and the standards with which those services are to comply. These are also reflected together with the prices in MaltaPost's licence for the operation of postal services in Malta.

⁸ Refer to regulation 17.1 of MaltaPost's licence. Regulation 17.2 of MaltaPost's licence also states that the minimum set of universal services must be published as public tariffs, be uniform across Malta and shall be affordable.

⁹ The provision of postal services, falling outside the scope of the universal service, such as express mail and courier services, has long been liberalised. There are presently nineteen (19) operators, including MaltaPost, providing services outside the scope of the universal service.

Refer to <http://www.mca.org.mt/filesystem/pushdocmgmtfile.asp?id=887&source=4&pin=>

This document presents the MCA's decision with respect to a number of issues related to the effective regulation of the postal sector in the transition to full market opening and beyond. These issues were consulted upon in the consultation paper entitled "Proposed regulatory direction on specific aspects of the universal postal service" and published on the 14th July 2010.¹⁰

Document Format

The MCA's position and decision on each of the aspects consulted upon are presented in the following four sections:

Section 2 depicts the MCA's decision on the definition to be used by the MCA when classifying postal services falling within the scope of the universal postal service.

Section 3 outlines the MCA's decision with regard to the bulk mail product which forms part of the universal postal service.

Section 4 outlines the MCA's decision on the regulation of tariffs for services offered by the USP that fall within the scope of the universal postal service but are not yet subject to effective competition.

Section 5 depicts the MCA's decision on the definition to be used by the MCA when establishing whether a service is an express mail (courier) service and therefore falls outside the scope of the universal postal service.

¹⁰ Refer to <http://www.mca.org.mt/infocentre/openarticle.asp?id=1434&pref=16>

2. Services within the Scope of the Universal Service

This section sets out the MCA's proposal on the formulation of a definition of services within the scope of the universal postal service, considers the responses received to the consultation, and outlines the MCA's position and formal decision.

2.1 Summary of Consultation Issues

An important distinction that needs to be made for regulatory and authorisation purposes in the postal market is between services falling within the scope of the universal service, services falling within the scope of the universal service and forming part of the minimum set of universal postal services to be provided throughout Malta at affordable prices and at a specified quality (refer to **Appendix 01**), and others that, while still being classified as postal services, fall outside the scope of the universal postal service.

The concept of the scope of the universal postal service is important because, amongst others, it determines the different regulatory obligations and authorisation regimes necessary to safeguard the universal service whereby:

- services falling within the scope of the universal service require a licence.¹¹ Moreover, the designated USP requires a specific licence and is obliged to provide the universal postal service;¹² and
- services falling outside the scope of the universal service require a general authorisation.¹³

Article 17(4) of the Postal Services Act describes the general characteristics of the postal services which fall within the scope of the universal service (sometimes referred to as the universal service area¹⁴). In addition, recital 27 of the European Postal Directive 2008/06/EC states that postal services are considered to fall within the scope of the universal service if they "*display inter-changeability to a sufficient degree with the universal service¹⁵, taking into account the characteristics of the service, including added value features, as well as the intended use and the pricing. These services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage.*"

Taking into account article 17 of the Postal Services Act and recital 27 of the European Postal Directive, the MCA proposed a definition to be used for regulatory and authorisation purposes to clearly classify those services falling within the scope of the universal service. The MCA proposed that postal services falling within the scope of the universal service should include:

- products required as part of the universal service obligation; and

¹¹ As stated in article 8 of the Postal Services Act, the scope of the universal service relates to postal services described under article 17(4) of the Postal Services Act.

¹² Refer to regulation 45 of the Postal Services (General) Regulations. Refer also to regulation 17.1 of MaltaPost's licence.

¹³ Refer to regulation 47 of the Postal Services (General) Regulations.

¹⁴ Refer to MCA's explanatory note on providing postal services in Malta - <http://www.mca.org.mt/infocentre/openarticle.asp?id=713&pref=16>.

¹⁵ As defined in article 3 of the European Postal Directive and article 17 of the Postal Services Act.

- products which are not part of the USP's universal service obligation but are substantially similar and display inter-changeability to a sufficient degree to such services.

In addition, the MCA also proposed that postal products would still be considered to be substantially similar and display inter-changeability to a sufficient degree to a universal service, even if:

1. the product is available only to a particular category of persons;
2. the product is not available nationwide;
3. the product does not have a daily delivery service and has one or more of the following characteristics:
 - the product provides for the collection of a postal article at a place specified by the sender of the postal article;
 - the product provides for the delivery of a postal article at or by a date specified by the sender of the postal article;¹⁶
 - the product provides for the delivery of a postal article at or by a time specified by the sender of the postal article;¹⁷
 - the product provides for the delivery of a postal article to be recorded; and
 - the product provides for the postage to be chargeable in a form or manner, or to be paid at a time or in a manner, different from that provided for by a postal service forming part of the universal service.

2.2 Summary of Respondents' Views

MaltaPost is of the opinion that services falling within the scope of the universal service consist only of services which are required as part of its USO. MaltaPost did not agree with the MCA that services falling within the scope of the universal service should also include services which are substantially similar and display inter-changeability to a sufficient degree with the universal postal service.

MaltaPost referred to recital 27 of the European Postal Directive and commented that this excerpt from the recital on which the definition proposed by the MCA is based, has been "*excerpted and interpreted outside its intended context*". MaltaPost indicated that this must be taken within the background of the entire recital 27 indicating that the aim of the recital is to determine which undertakings may be required to contribute to a compensation fund.¹⁸ MaltaPost claimed that the objective "*in recital 27 is not to increase/include interchangeable products in the scope of the universal service but to adequately compensate the USP for the cost of providing the universal service by introducing criteria for the mechanisms that would govern the compensation fund, if such fund is the method of*

¹⁶ Services meeting the special needs of customers who require that a series of time-sensitive items of correspondence are delivered at the precise date specified.

¹⁷ Services meeting the special needs of customers who require that a series of time-sensitive items of correspondence are delivered at the precise time specified.

¹⁸ The compensation fund is one of the mechanisms introduced by the Directive that can be used to finance the universal service.

compensation of the universal service obligation adopted by the Member State in question.” MaltaPost responded that the criteria cited in the consultation paper to define the scope of the universal postal service should be used only for regulating a potential compensation fund.

MaltaPost also commented that the proposed definition for postal services falling within the scope of the universal service is too wide. *“If the proposed definitions of the MCA were to be introduced, the universal service would be increased substantially, whereby potentially ‘few’ or ‘no’ postal services would be considered to fall outside the scope of the universal service.”* MaltaPost added that this would imply added regulation in previously non-regulated areas, contrary to the thrust given by the European Postal Services Directive.

MaltaPost reiterated that the criteria laid down by the MCA should be used only to qualify the entities that should contribute to a compensation fund, if such a fund was eventually introduced. They also commented that the characteristics laid down by the MCA whereby certain characteristics would not be considered to exclude a service from being considered to fall within the scope of the universal service, *“would contradict the very nature of the term ‘universality’”*.

MaltaPost further commented that, *the “term ‘universal’” in itself requires that the product or service is provided universally, so arguing that a product or service which is not provided universally falls within the scope of the universal service is a contradiction of terms.”* According to MaltaPost *“the remaining provisions of the Directive continue to support this interpretation of what the universal service should consist of, which proffer no support to the definitions laid down in the Consultation Paper.”* MaltaPost concluded that it *“cannot support the definition put forward by the MCA, but that this definition should be introduced to define what activities of postal operators should be used to finance the universal service obligation in the context of a compensation fund.”*

The Express Association of Malta commented that *“more generally, and in contrast to the MCA proposed direction 1 on inter-changeability, day-or time defined delivery services, such as scheduled deliveries by 9’o clock or 12’o clock the next day, cannot be considered to be interchangeable with the universal services: they satisfy a customer need for very specific logistic services, which the universal services users do not request.”*

The Express Association of Malta argued that guaranteed day-or time defined delivery services are not interchangeable and consequently do not fall within the scope of the universal service. To this end the Express Association of Malta made reference to Commission Decision of the 21st December 2000, concerning proceedings pursuant to Article 86 of the EC treaty in relation to the provision of new certain services with a guaranteed day-or time certain delivery in Italy.¹⁹

2.3 MCA Position and Decision

As clearly stated in both European and local legislation, and as shown in **Table 1** overleaf, the obligations related with each type of authorisation for the provision of postal services (i.e. services falling within the scope of the universal service and services falling outside the scope of the universal service) vary.

¹⁹ European Commission (2000), *Commission Decision concerning proceedings pursuant to Article 86 of the EC Treaty in relation to the provision of certain new postal services with a guaranteed day- or time-certain delivery in Italy*, Brussels, Official Journal of the European Communities (L 63, 03/03/2001)

Postal Service Provider licensed to offer services within the scope of the universal services - Designated Universal Service Provider ²⁰	Postal Service Provider licensed to offer 'non-reserved' services within the scope of the universal service ²¹	All operators providing services 'outside' the scope of the universal service ²²
<p>Licence Terms and Conditions</p> <p>To provide the Universal Postal Service <i>Ex-ante</i> Price Control Standards of Service Compensation and Complaint Handling Protection of the integrity of mail Detailed Accounting Separation Universal Postal Service / Prices²³</p>	<p>Licence Terms and Conditions</p> <p>Delivery of postal articles according to standards agreed upon in individual contracts Services Provision and Complaint Handling Provision of information Protection of the integrity of mail Accounting separation</p>	<p>General Authorisation Terms and Conditions</p> <p>Outline of services to be offered Details of the organisation's complaint handling facility Details of mail integrity procedures in place</p>

Table 1: Type of Authorisation (Licence / General Authorisation) and Extract of Main Authorisation Terms and Conditions

²⁰ Refer to MaltaPost Plc licence which depicts the list of postal services which form part of the universal postal service. Refer to <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

²¹ Refer to Premiere Post Limited and DHL's licence to provide non-reserved postal services in the scope of the Universal Postal Services: <http://www.mca.org.mt/infocentre/openarticle.asp?id=1018&pref=18> and <http://www.mca.org.mt/filesystem/pushdocmgmtfile.asp?id=1390&source=3&pin=>

²² Refer to General Authorisation Notification Form - <http://www.mca.org.mt/infocentre/openarticle.asp?id=609&pref=16>

²³ As the USP, MaltaPost is obliged to provide the list of services depicted in **Appendix 01** (also reflected in its licence). Regulation 17.2 of MaltaPost's licence states that "the appendix to this licence defines the products which constitute the universal postal services."

The most significant obligations are imposed on the USP (currently MaltaPost as the sole USP in Malta), which is obliged to provide the universal postal services depicted in the Postal Services Act. The specific products which constitute the universal postal services in Malta and to be provided under specific conditions by the USP are also depicted in MaltaPost's licence and in **Appendix 01**.²⁴

Fewer obligations are incumbent on other providers that provide services within the scope of the universal service. Minimal regulation is imposed on services offered outside the scope of the universal service (such as providers of express mail services as defined in Section 5) as this is already deemed to be a competitive market. For these operators regulation relates mainly to the protection of the integrity of mail and ensuring that consumers have proper redress mechanisms in case of any grievances.

The USP is subject to more regulation due to the nature of the services it offers. The USP must provide the universal postal service to everyone and every organisation in Malta. Regulation focuses specifically on: accessibility, affordability, and the quality of service. The MCA must therefore ensure that MaltaPost is able to carry out its licensed activities, the most important of these being the provision of the universal postal service. The MCA also ensures that MaltaPost meets its quality of service (QoS) obligations which cover the universal postal service.

Regulation however, must also be equitable and proportionate, ensuring fair market conditions and a level playing field among postal service providers. Consequently, providers who provide similar services to those being provided as part of the universal postal service must also be appropriately regulated to ensure that the services being provided to consumers are of a particular quality comparable to the universal postal service.²⁵

As stated in the consultation paper, in addition to article 17(4) of the Postal Services Act which describes the general characteristics of the postal services which fall within the scope of the universal service, recital 27 of the Postal Services Directive²⁶ is important in view of classifying which products fall within the scope of the universal postal service – therefore requiring an individual licence to provide postal services. Recital 27 of the Postal Services Directive clearly states that postal services are considered to fall within the scope of the universal service if they “display inter-changeability to a sufficient degree with the universal service,²⁷ taking into account the characteristics of the service, including added value features, as well as the intended use and the pricing”. The recital also notes that services within the scope of the universal service “do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage.”

²⁴ Also reflected in MaltaPost's licence - whereby the products which constitute the universal postal service and the prices, terms and conditions of those products cannot be changed without the prior agreement of the MCA.

²⁵ In line with article 8(2) of the Postal Services Act the MCA may if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services on postal operators operating within the scope of the universal postal service.

²⁶ Refer to Directive 2008/06/EC.

²⁷ As defined in article 3 of the European Postal Directive and article 17 of the Postal Services Act.

The MCA does not agree with MaltaPost that this definition should be used only to determine which entities should contribute to a compensation fund in the event that such a fund is required. Both the Postal Services Directive and the Postal Services Act and the related Regulations make various references to authorisation requirements in relation to services which fall within and outside the scope of the universal service - thus the need for further clarity and a clear definition on the services that fall within the scope of the universal service and therefore subject to a licence.

Article 9 of the Postal Services Directive (reflected in article 8 of the Postal Services Act) states that for services which fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements. The same article states that for services which fall within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service.

There are other instances in the Postal Services Directive (and reflected in the Postal Services Act and related Regulations) where specific reference to services falling within the scope of the universal service is made. These include for example: access to services being provided within the scope of the universal service - article 11a; the possibility of redress in respect of complaints to undertakings providing services within the scope of the universal service - article 19(2); and the possibility to oblige these same undertakings to publish data on complaints - article 19(2).²⁸

In the consultation paper the MCA proposed that postal services meeting the special needs of customers who require that a series of time-sensitive items of correspondence are delivered at the precise date or time as specified by the sender, would still be considered to be similar to a universal postal service therefore falling within the scope of the universal service. However, taking into consideration the responses received to the consultation paper, from both MaltaPost and the Express Association of Malta, the MCA has concluded that such services would not fall within the scope of the universal service.

The MCA acknowledges that postal services meeting the special needs of customers who require that a series of time-sensitive postal items which are delivered at the precise time or date as specified by the sender (also referred to as guaranteed-time or day-certain deliveries) differ from services falling within the scope of the universal service.²⁹ Such guaranteed-time or day-certain deliveries (measured from acceptance to delivery) are not deemed to display inter-changeability with the universal postal service as these services meet the special needs of customers who require that a series of time-sensitive postal

²⁸ Regulation 7H.(2) of the Postal Services (General) Regulations indicates that "the universal service provider and where the Authority may consider appropriate, any operator providing services within the scope of the universal service, shall at least once every calendar year publish information on the number of complaints received, detailing what they were about and how they were dealt with."

²⁹ These services specifically relate to time-sensitive postal items to be delivered at the precise time or date as requested by the sender. These services clearly do not relate to, for example, the incoming delivery of postal articles, marked as express, as referred to in regulation 16 whereby the exact day or time of delivery (i.e. from acceptance/collection to delivery) is not pre-agreed with the sender. These postal services clearly fall within the scope of the universal postal service.

items of correspondence are delivered at the precise date or time as specified by the sender.³⁰

The MCA recognises that the universal postal service, in general, does not offer any guarantee as to the precise day or time the item will be delivered. These services are governed by general delivery targets which do not specify the exact day or exact time of delivery (i.e. the pre-set delivery time as requested by the sender). The precise day or time at which the item is delivered is not relevant.³¹ Therefore a postal service that guarantees the delivery of postal articles (from acceptance/collection to delivery) at a pre-arranged date or time specified by the sender of the postal article do not fall within the scope of the universal service as such services go beyond the general needs of the public and are therefore not considered to be interchangeable with the universal postal service.

The MCA notes that guaranteed-time or day-certain deliveries are different from services that may specify a general target on the time or date of delivery which however is not guaranteed. In addition, day-certain or guaranteed-time deliveries are different from the delivery on appointment feature, whereby the postman arranges for a prior appointment with the recipient in order to establish a mutually convenient delivery date and time. Through this service the postman only arranges for an appointment when the item has arrived at the distribution centre. The ad hoc delivery does not change the fact that the service is governed by delivery targets rather than by a guarantee that delivery takes place at a pre-arranged day or time. Moreover, payment for such services is not "conditional on the successful accomplishment of delivery on a precise pre-arranged day or at a pre-arranged time."³²

Taking into account the above, the MCA has, in its final decision, made some modifications to the definition proposed in the consultation paper for determining whether a postal product falls within the scope of the universal postal service. These changes relate mainly to the fact that the day-certain or guaranteed-time deliveries as specified by the sender are services which fall outside the scope of the universal service and therefore should not be included in the definition for services within the scope of the universal service.³³

The definition outlined in the decision below defines the meaning of services within the scope of the universal postal service and is relevant to postal operators who are subject to an individual licence to provide postal services within the scope of the universal service.

³⁰ The characteristics of these postal services must be clearly established in the terms and conditions of the service (including, amongst others, appropriate compensation mechanisms for not meeting the guaranteed day or time for delivery as agreed with the sender).

³¹ European Commission (2000), pp. 62-63.

³² Ibid., 63.

³³ This refers to a service which is encompassed within the definition of a postal service (i.e. services involving the clearance, sorting, transport and distribution of postal articles) and not covered by the definition of the scope of the universal postal service.

Decision 1 – Services within the Scope of the Universal Postal Service

The following postal services would be considered to fall within the scope of the universal service:

- (1) A service which falls within the description of a service forming part of the universal postal service as defined in the Postal Services Act.³⁴
- (2) A service which falls within the description of a service forming part of the universal postal service but:³⁵
 - a. the service does not have (in the case of a service consisting of the delivery or collection of postal articles) the delivery or collection made on each of the days as required for services forming part of the universal postal service;³⁶ and/or
 - b. the service is not provided nationwide;³⁷ and/or
 - c. the service is available only to a particular category of persons; and/or
 - d. the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout Malta in line with the principles set out in the Postal Services Act;³⁸ and/or
 - e. the service provides for the collection of a postal article at a place specified by the sender of the postal article; and/or
 - f. the service provides for the delivery of a postal article at or by a time that can be specified by the addressee in liaison with the postal service provider, after the item has arrived at the postal service provider's distribution centre; and/or
 - g. the service provides for the postage to be chargeable in a form or manner, or to be paid at a time or in a manner, different from

³⁴ Article 17 of the Postal Services Act describes the universal postal service. Regulation 17.1 of MaltaPost's licence reflects the generic services that constitute the universal postal service. The specific list of postal services provided by MaltaPost that make up the universal postal service in Malta is reflected in MaltaPost's licence and **Appendix 01** of this Decision Notice.

This clause previously read: "*products required as part of the universal obligation.*"

³⁵ In the proposed direction this list of characteristics followed point **(3)** of **Decision 1**. It was also felt that these characteristics would be better recorded within a separate point, as the criteria by which a service would still be considered to be interchangeable within the universal service are listed separately in recital 27 of the Third Postal Directive.

³⁶ In the proposed direction this clause did not make reference to 'collection.' The clause now makes it clear that the product is still considered to fall within the scope of the universal service even when the delivery or collection of postal articles is not made on each of the days required in article 17(3) of the Postal Services Act.

³⁷ The word 'provided' was used instead of 'available' as it is more consonant with the nature of the postal service, where a service is not merely available but is being 'provided' to end users.

³⁸ Refer to article 21 of the Postal Services Act. Also refer to regulation 17.1 of MaltaPost's licence whereby prices for universal postal services (i.e. services as defined in **point 1** of **Decision 1**) shall be published as public tariffs, be uniform across Malta and shall be affordable.

that provided for by a service forming part of the universal postal service.³⁹

- (3) A service which, in the opinion of the MCA, is of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service that falls within the description of a service forming part of the universal postal service (as defined in **point 1** of this **Decision 1**). The MCA will also take into account the characteristics of the service being provided, including added value features as well as the intended use and the pricing.⁴⁰

In this Decision any reference to a service includes part of a service.

Decision 1 is effective on publication of this Decision Notice.

³⁹ In the original proposal there was a reference that *"the product provides for the delivery of a postal article to be recorded."* This reference has been removed as the registered postal item already forms an integral part of the universal postal service as described in article 17(4) of the Postal Services Act.

⁴⁰ This clause previously read as follows: *"products which are not part of the USP's universal service obligation but are substantially similar and display inter-changeability to a sufficient degree to such services."*

The following part of the clause: *"taking into account the characteristics of the services, including added value features, as well as the intended use and the pricing"* was added to better reflect the wording of recital 27 of the Third Postal Directive.

Reference to *"substantially similar"* has been removed as the provisions included in **point (2)** of **Decision 1** are deemed to be comprehensive enough to encompass all the characteristics by which a service would be considered to be substantially similar to the universal service.

3. Bulk Mail as a Universal Postal Service

This section sets out the MCA's proposal on the role of the bulk mail product within the universal postal service, considers the response received to the consultation, and outlines the MCA's position and formal decision.

3.1 Summary of Consultation Issues

Postal services are essential to small, medium and large businesses and, therefore, to economic development. Businesses rely on the provision of reliable and secure postal services to ensure the distribution of postal articles to their customers, suppliers and enquirers on a day to day basis.

Bulk mail is essential for the effective functioning of business and commerce in Malta. Large business mailers need to be able to send mail such as statements, advertising mail and bills to all their customers, regardless of where in the country they live. Access to an efficient bulk mail service is also imperative for smaller businesses, facilitating contact with their customer base.

In this context the bulk mail service forms an integral part of the postal services required by business users. From the large business mailers market research, carried out by the MCA in 2009, it emerged that 93.8% of the large businesses interviewed used the addressed priority bulk mail service⁴¹ offered by the USP, compared to 91.7% in 2006.⁴²

As defined in the MCA's decision on MaltaPost's Quality of Service (QoS) Targets to be achieved by MaltaPost (December 2007),⁴³ bulk mail comprises of a substantial number of similar postal articles which are deposited with the postal service provider, at the same place and time, to be conveyed and delivered to the addressees indicated on the items. The bulk mail product includes: letter mail, direct mail (which is a particular form of bulk mail as defined in the Act), magazines and newspapers.

The MCA notes that the priority bulk mail product offered by MaltaPost has always formed part of the universal postal service. Postal articles consisting of fifty (50) or more items of identical format and size may be handed over at any retail counter during their respective opening hours to be delivered by MaltaPost to the addressees indicated on the postal articles themselves. When the amount of letters to be posted is substantial, posting of these items takes place at the Bulk Mail Section located in MaltaPost's Head Office building at Marsa, which provides additional, better suited, facilities.⁴⁴

Presently, only the priority direct mail product is included as a universal postal service in MaltaPost's licence. MCA considers that the priority bulk mail product should be included as a distinct universal postal service in MaltaPost's licence due to the necessity of such a service for society in general. This will provide better clarity and certainty to customers that the priority bulk mail product will continue to be subject to a universal service obligation.

⁴¹ A priority bulk mail service refers to a bulk mail service with a next day delivery (D+1). D+1 represents one (1) working day from the date of deposit to delivery to the addressee.

⁴² Refer to <http://www.mca.org.mt/infocentre/openarticle.asp?id=1376&pref=18>.

⁴³ Refer to <http://www.mca.org.mt/infocentre/openarticle.asp?id=1145&pref=16>.

⁴⁴ Refer to MCA (2008), *Decision Notice on MaltaPost Plc's Universal Service Obligations - Accessibility, Daily Delivery and Provision of Information* (on-line) :

<http://www.mca.org.mt/infocentre/openarticle.asp?id=1177&pref=16>.

3.2 Summary of Respondents' Views

In its response to the consultation MaltaPost did not object to the priority bulk mail product being included as a distinct universal postal service.

MaltaPost also commented that it *"had prepared a Bulk Posting Scheme which included the terms and conditions together with the fees applicable to the scheme and submitted it to the MCA. The comments by the MCA were taken in consideration, and in fact the revised bulk posting scheme was approved by the MCA on the 27th May 2009. Due to the elapse of time, some final cosmetic amendments are being made to the scheme which is expected to be published shortly."*

3.3 MCA Position and Decision

Following the publication of the consultation paper, MaltaPost published its postal service scheme for the priority bulk mail service.⁴⁵ Postal Service Schemes regulate the commercial relationship between the USP and the customer.⁴⁶

For further clarity and certainty that the priority bulk mail product forms part of the universal postal service, the MCA notes that in line with regulation 23(i) of the Postal Services (General) Regulations,⁴⁷ the priority bulk mail product offered by MaltaPost is considered as a distinct universal postal service (refer to **Appendix 01** for the list of postal services which form part of the universal postal service in Malta).

The MCA notes that in line with article 21 of the Postal Services Act, tariffs of the universal services must be, amongst others, affordable and cost-oriented and give incentives for an efficient universal service provision. Furthermore whenever the USP applies special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.

In line with MaltaPost's licence prices for universal services shall be published as public tariffs, be uniform across Malta and shall be affordable.

⁴⁵ The bulk mail posting scheme can be accessed through the following link:

<http://www.maltapost.com/filebank/Schemes/BulkPostingSchemeTRK30Nov10.pdf>

⁴⁶ Refer to regulation 43 of the Postal Services (General) Regulations and the MCA's Decision on the MaltaPost Plc's Universal Service Obligations - Accessibility, Daily Delivery, Provision of Information. Amongst others, the MCA may require the USP to amend any existing scheme that may have been adopted in accordance with regulation 43 where the said scheme is in conflict with the Act, the licence or authorisation conditions, or with any decision or directive issued by the MCA.

⁴⁷ This regulation highlights that the "postal services that shall be required to be provided by the universal service provider or providers so designated shall include all or any of the following: . . . (i) any other service as the Authority may from time to time by directive require the universal service provider to provide: Provided that before doing so the Authority shall first consult the universal service provider."

Decision 2 – Bulk Mail Service as a Universal Postal Service

In line with regulation 23 of the Postal Services (General) Regulations, the priority bulk mail product forms part of the services that constitute the universal postal service in Malta (refer to **Appendix 01**).

The priority bulk mail product is to be provided by MaltaPost as the current designated USP.

The tariffs for the bulk mail product forming part of the universal postal service shall be published as public tariffs, be uniform across Malta and shall be affordable and must comply with the principles stated in Article 21 of the Postal Services Act.

Decision 2 is effective on publication of this Decision Notice.

4. Tariff Regulation and Price Control

This section sets out the MCA's proposals on the regulation of the USP's tariffs pertaining to services falling within the scope of the universal postal service, considers the responses received to the consultation and outlines the MCA's position and formal decision.

4.1 Summary of Consultation Issue

MaltaPost's long standing position as the incumbent⁴⁸ has ensured that MaltaPost enjoys a dominant position within the scope of the universal postal service. In regulation 24.1 of MaltaPost's licence⁴⁹ for the operation of postal services in Malta it is indicated that the **"licensee shall not use its dominant position as the USP to obtain an unfair commercial advantage over competitors nor shall it abuse its dominant position in the postal market."**⁵⁰

Control over postal services, forming part of the universal postal service, is ensured through provisions enabling the *ex-ante* tariff approval of these products or services.⁵¹ Furthermore tariffs for each of the services provided by MaltaPost which form part of the universal postal service must comply with the principles outlined in article 21 of the Postal Services Act.⁵² However presently there are no clear *ex-ante* price control provisions in place if MaltaPost provides products or services within the scope of the universal postal service but which do not fall within the description of a service forming part of the universal postal service.⁵³

Given MaltaPost's dominant position in this area and the fact that the postal market will be fully liberalised by the end of 2012, the MCA proposed that regulatory provisions with regard to tariff approvals for products or services falling within the scope of the universal service (in addition to those which fall within the description of a service forming part of the universal postal service) should be introduced to ensure that consumers' and potential competitors' interests are safeguarded and to ensure a smooth transition to a competitive environment.

The MCA is of the opinion that sector-specific price control carries the advantage of preventing the setting of high prices, as opposed to general competition legislation which can only be invoked once high prices have been set and after

⁴⁸ This position has been consolidated by the reserved area. This is effectively a legal monopoly on items of inland correspondence, cross-border and direct mail up to 50 grams. The reserved area will be removed and the postal sector will be fully liberalised by the end of 2012.

⁴⁹ Refer to <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

⁵⁰ In line with article 8(3) the MCA may, among others, impose conditions requiring the licensee to comply with any directives and, or decisions issued by the MCA as to matters stated in the individual licence; conditions requiring the licensee to do or not to do such things as may be specified in the individual licence; and such other conditions as may be prescribed by the Authority from time to time.

⁵¹ Refer to regulations 17.2 and 17.3 of MaltaPost's Licence. Prices for universal services shall be published as public tariffs, be uniform across Malta and shall be affordable. The MCA will only consider alterations to prices, terms or conditions in the event of exceptional and, or unforeseen circumstances.

⁵² In line with article 76A of the Postal Services Act the MCA may issue directives to a USP in respect of compliance with the principles as stated under articles 21 and 22.

⁵³ It is noted that in line with regulation 43 of the Regulations, the MCA may require MaltaPost as the USP to amend any existing scheme that may have been adopted in accordance with this regulation where the said scheme is in conflict with the Act, the licence or authorisation conditions, or with any decision or directive issued by the MCA.

the abuse of a dominant position can be attested to. Until effective sustainable competition in the postal markets exists, the *ex-ante* regulation of the USP's prices of services which fall within the scope of the universal service would ensure that customers who do not have a choice of service provider continue to receive a good postal service at a just and reasonable price. Moreover, this would also ensure that the price would not constitute a barrier to entry to potential competitors.

As mentioned in the consultation paper the MCA is working on a proposal to review its regulatory framework to further facilitate the transition from a partially liberalised environment to a competitive market in light of full market opening. Until such a framework is implemented it is important that there are in place such price control regulatory provisions to safeguard the interests of postal users and competitors alike.

4.2 Summary of Respondents' Views

In its response to the consultation paper MaltaPost reiterated its 'right' with respect to universal service prices to *"annually revise these rates upwards in relation to the rate of inflation in line with the 1998 agreement between the Government and MaltaPost plc."*

MaltaPost also suggested that the MCA should promote pricing flexibility for the USP. MaltaPost commented that it *"is in a prejudicial position since it is not on the same level with other operators in terms of pricing flexibility. If a competitor enters the market and offers better pricing for our users, MaltaPost p.l.c. cannot revise its pricing structures, since the approval procedure with the MCA is complex and until such approval is sought, MaltaPost p.l.c. could potentially be crippled by the competitors who take advantage of the disability of our company to react to the competition."*

Consequently, MaltaPost proposed that the MCA should consider *"introducing flexible pricing mechanisms in the postal market, whereby for services falling within the universal service, all players in the market are equally governed by a price cap and floor, and each player enjoys total flexibility within these set parameters. Such a system would guarantee that each player would operate on a level playing field, whilst the prices charged remain affordable for the consumers. Regulatory safeguards should not be introduced to stifle competition in an effort to place inefficient players at an unfair competitive advantage vis-à-vis the Universal Service Provider. An equitable operating environment should not encourage competitors who only cherry-pick the market where the Universal Service Provider is bound by regulatory constraints."*

MaltaPost did not agree with the MCA that *prices of those services which are not subject to a universal service obligation but fall within the scope of the universal postal service should be subject to ex-ante price control.* MaltaPost referred again to the argument raised in its response to the consultative question on the meaning to be assigned to the scope of the universal service, whereby it disagreed that *"it is the intention of the EU Directive to regulate these services."*

4.3 MCA Position and Decision

The MCA would like to clarify that the agreement referred to above between Government and MaltaPost related mainly to the passage of assets between the Government of Malta and MaltaPost and the setting up of the latter as an independent commercial entity. Furthermore, this agreement related to a period when there was no regulatory authority for postal services and MaltaPost had an

absolute monopoly in the sector.⁵⁴ Moreover, the Postal Services Directive was not yet transposed in the local legislative framework as Malta was not yet a member of the European Union.⁵⁵ The principles upon which universal service prices should be based are laid down in the Postal Services Directive⁵⁶ and transposed into national legislation. The MCA has, as one of its functions, the task of “ensuring compliance with the obligations arising from this Directive.”⁵⁷ As such it is now the prerogative of the MCA to monitor and regulate universal postal service prices, according to these principles. As laid down in the Postal Services Act the MCA may issue directives to the USP in respect of compliance with the principles as stated under article 21.

The MCA regulates the prices of the universal postal services in line with the Postal Services Act and MaltaPost’s licence. The prices of the universal postal services listed in MaltaPost’s licence cannot be changed without the prior agreement of the MCA.⁵⁸ Such provisions ensure, amongst others, the affordability of the universal postal service in view of the USP’s dominant position in the provision of these services. In addition to ensuring the affordability of the universal postal service the MCA must also take account of the costs of providing the service or part of a service, and that they incentivise the service to be provided efficiently. Moreover, the prices of services forming part of the universal postal service must also be transparent and non-discriminatory.

In order to ensure a smooth transition to a competitive environment following full market opening of the postal sector and to ensure that the universal service is safeguarded, the MCA is of the opinion that price control should apply to all services provided by MaltaPost which fall within the scope of the universal service and where no effective competition exists.⁵⁹ In assessing whether a proposed tariff is just and reasonable the MCA will, amongst others, assess whether the prices are either excessively high or impose a price squeeze⁶⁰.

⁵⁴ Directive 97/67/EC had ensured the separation of the functions of the regulator and the operator. In fact in recital 39 of the Directive it is indicated that: “in order to ensure the proper functioning of the universal service and to ensure undistorted competition in the non-reserved sector, it is important to separate the functions of the regulator on the one hand, and the operator, on the other; whereas no postal operator may be both judge and interested party.” This is reflected in article 22 of the Directive which highlights that “each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators.”

⁵⁵ Malta became a Member State of the European Union on the 1st May 2004.

⁵⁶ Article 12 in fact regulates the tariff principles and the transparency of accounts for each of the services forming part of the universal service. It states, amongst others, that for services forming part of the universal service “prices shall be affordable” and that these must be “cost-oriented and give incentives for an efficient universal service provision.” In addition, with the consent of the Minister responsible for Post, the MCA may decide that a uniform tariff shall be applied throughout Malta to services provided at single piece tariff and to other postal articles.

⁵⁷ Refer to article 22 of Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/06/EC.

⁵⁸ Refer to paragraph 17.2 and 17.3 of MaltaPost’s universal services postal licence.

⁵⁹ Refer to article 76A. (1) of the Postal Services Act which states that the “Authority may in accordance with the provisions of article 4(6) and (7) of the Malta Communications Authority Act, issue any such directives to any postal operator as it may consider to be necessary for the purposes of and in accordance with the provisions of this Act.” Amongst others, the MCA shall ensure fair competition in all such services, products, operations and activities.

⁶⁰ A reduction in prices of services to the end user from the incumbent that causes a loss of market share to efficient competitors, unable to sustain the reduction, and is the result of a price unreasonably low for the costs that should be attributed to the service.

The MCA is of the opinion that both customers' and potential new entrants' interests should be protected in the event that MaltaPost decides to offer new services within the scope of the universal service given its current incumbent position in this area. Without the *ex-ante* regulation of prices for products offered by MaltaPost which are not necessarily subject to a USO but fall within the scope of the universal service, MaltaPost could reduce prices for these services when faced with competition. At the same time they could recover revenue 'lost' from these price reductions by raising the relative prices of services in areas where they have little prospect for competition.⁶¹

The MCA recognises that, although tariff control of MaltaPost's postal services is required at a stage when the postal sector is moving to a competitive environment, some postal markets will be subject to a higher degree of competitiveness than others. Consequently the form, scope and duration of price controls over the different postal markets (or its various market segments) may vary. Therefore the USP may seek to remove services from price control to the extent that it believes that competition has developed in the provision of those services. However it is for the MCA to determine whether an appropriate degree of competition has been established.

The MCA does not agree with the proposal put forward by MaltaPost to introduce flexible pricing mechanisms, by introducing a price cap and floor, which would govern all postal operators providing services within the scope of the universal service. The MCA is of the opinion that such an approach would stifle potential competition and act as a barrier to entry for new operators. Such a pricing mechanism which determines how retail prices are increased over time should not be imposed on all postal operators but may be considered in the area of the universal postal service and where an operator enjoys a dominant position in a particular postal market.

Price regulation may still apply in those cases where the MCA deems it necessary to safeguard the universal postal service.

As already mentioned above, the MCA is working on a proposal to review the postal regulatory framework to further facilitate the transition to a competitive market in light of full market opening, which will take place by not later than the end of 2012. This framework will, amongst others, establish the criteria that the MCA will use in determining whether competition has developed sufficiently in the provision of services within the postal market (or its various market segments) in order to remove services from price control.

⁶¹ For example although non-priority mail services are not included as part of the universal postal service obligations, these services fall within the description of a service forming part of the universal postal service as defined in Postal Services Act (and therefore are within the scope of the universal postal service). If offered by the USP these services will be subject to price control.

Decision 3 - Regulation of the USP's tariffs with respect to postal services within the scope of the universal postal service

Any service offered by the USP which falls within the scope of the universal postal service is subject to *ex-ante* tariff regulatory provisions:⁶²

- The USP must submit to the MCA its intended price for approval. A written request and approval would also be needed if it intends to modify the prices, terms and conditions at which such services are offered.
- In the case of a product which falls within the scope of the universal postal service but is not subject to a USO (refer to **Appendix 01**),⁶³ the USP would have the discretion to withdraw that particular product after appropriate notice is given to the MCA and to its customers.⁶⁴

In filing any tariff with the MCA for approval the USP must provide a memorandum containing:

- a clear description of the service to be offered;
- a clear statement of the prices, terms and conditions; and
- any discounts or special considerations that will be offered and the requirements that must be satisfied (such as minimum volume or term requirements) to obtain these discounts.

In the case of a requested modification to the price of an existing service the USP must provide sufficient information as to why the proposed price modification is required, supported by cost data and any other information that may be requested by the MCA.

In assessing whether a proposed tariff for a new or existing service is just and reasonable the MCA will assess whether the prices, terms and conditions are either excessive or inadequate. To this end the MCA will apply the following criteria:

- To assess whether the prices are excessive the MCA will take into consideration cost data provided by the USP.
- To determine whether the prices are inadequate the MCA will assess

⁶² The wording in the consultation document read as follows: "Any product offered by MaltaPost that falls within the scope of the universal service would be subject to the same *ex-ante* tariff regulatory provisions as those subject to a universal service obligation." Though the wording has been changed slightly, the essence of the argument proffered in the original proposal has remained the same in this Decision.

⁶³ I.e. not part of the specific postal products provided by the USP which form part of the universal postal service in Malta (refer to **Appendix 01**).

⁶⁴ The original wording read as follows: "In the case of a product which is not part of the USP's universal service obligation but falls within the scope of the universal service, MaltaPost would have the discretion to withdraw that particular product after appropriate notice is given to the MCA and to its customers." Similar to the comment made in footnote 62, though the argument has been changed, this has not in any way changed the crux of the original proposal.

through the cost data provided by the USP that the latter will make an adequate profit margin on the products offered. Where there is already an element of competition for that particular service the MCA will also take into consideration how the prices compare to those offered by other licensed postal service providers.

- In determining whether the prices are either excessive or inadequate the MCA may use cost accounting methods independent of those used by the operator.⁶⁵
- Depending on the impact the introduction of the product may have, the MCA may also consider other relevant factors.

In line with the USP's licence obligations each new service is required to be accounted for separately since relevant accounting data would need to be extracted in order to determine any requests for the modification of prices.⁶⁶

The USP may request the MCA to remove postal services within the scope of the universal postal service from price control to the extent that it believes that competition has developed sufficiently in the provision of those services within the postal market (or its various market segments). In such cases the MCA will, following an analysis of the related postal market (or its various market segments), consult with all stakeholders before concluding that particular parts of the market can be deemed to be effectively competitive. It is the MCA's responsibility to determine whether the removal of price control on postal services should be permitted or not.⁶⁷

Price control may still apply in those cases where the MCA deems it necessary to safeguard the universal postal service.⁶⁸

The MCA will continue to ensure that the tariffs for each of the services provided by the USP which fall within the description of a service forming part of the universal postal service (as defined in point **1** of **Decision 1**) comply with the principles stated in article 21 of the Postal Services Act.⁶⁹

Decision 3 is effective on publication of this Decision Notice.

⁶⁵ This provision did not form part of the original proposal but was now introduced to further clarify the role and the methods that may be used by the MCA when reviewing the cost accounting data presented by MaltaPost.

⁶⁶ Refer to regulation 23 of the USP's licence.

⁶⁷ This clause has been included to provide flexibility in removing any price control obligation if the market is deemed to be effectively competitive and is without prejudice to any *ex-post* obligations.

⁶⁸ This clause has been inserted to further reiterate the principles found in the Postal Services Directive and in the Postal Services Act in order to safeguard the universal postal service.

⁶⁹ In line with article 76A of the Postal Services Act the MCA may issue directives to a USP in respect of compliance with the principles as stated under articles 21 and 22. MaltaPost's licence also states that prices for universal services shall be published as public tariffs, be uniform across Malta and shall be affordable. The product list and their respective prices are included subject to the power of the MCA to issue directives to ensure compliance with the requirements of article 21 of the Postal Services Act.

5. Express Mail Services

This section sets out the MCA's proposals on how express mail services should be defined for regulatory and authorisation purposes, considers the responses received to the consultation and outlines the MCA's position and formal decision.

5.1 Summary of Consultation Issue

Express mail⁷⁰ sent through express mail or courier service providers⁷¹ are accelerated postal services (i.e. the expedited collection, transport and delivery of postal articles) characterised throughout by a degree of speed, tracking and managerial control throughout the supply of the service (i.e. from acceptance to delivery)⁷² that exceed that applied to the fastest standard category⁷³ of the basic universal letter post and parcel service.⁷⁴ An express mail service can be both local and cross-border.⁷⁵

Express mail services are operationally distinct from the traditional postal services, geared to a higher level of speed and reliability. The essence of express mail services lie in the seamless and efficient coordination of collection, transportation and delivery of postal items. The provision of such services is based on a niche geared on the urgent exchange of physical communications making speed one of the defining characteristics of express mail services.⁷⁶

The Postal Service Directive 97/67/EC clearly indicates that "whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay."⁷⁷

The 1998 Commission Notice on the *application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services*, defines an express mail service as a "service featuring, in addition to greater speed and reliability in the collection, distribution, and delivery of items,

⁷⁰ Refer to recital (18) of Directive 97/67/EC, "Whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (*whatever form it takes*) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay, without prejudice, however, to the price limit of the reserved area which must be respected."

⁷¹ A courier service provider focuses on the delivery of express postal articles in which the postal article is in the possession of an employee of the company at all stages of its journey.

⁷² I.e. from the point mail is placed into the collection/acceptance system under the responsibility of the collecting postal operator to the final delivery point under the responsibility of the delivering postal operator.

⁷³ The fastest standard category of basic universal letter post and parcel service relates to the USP's services subject to a next day delivery target (D+1). Refer to MCA's Decision on the QoS to be achieved by the USP published in 2010.

⁷⁴ These universal services are subject to delivery targets but do not provide for certainty and guarantee as to the exact day or time of delivery.

⁷⁵ "Cross-border mail" means mail to or from another country (European / International).

⁷⁶ Scantelbury, D (2009). *Concept paper – Postal and Courier Services within the Caricom Single Market and Economy (CSME) in Regional Symposium on Services. Services – a roadmap to the future*, 2009, p. 2, http://www.caricom.org/jsp/single_market/services_regime/concept_paper_postal_courier.pdf

⁷⁷ Refer to recital 18 of Directive 97/67/EC.

all or some of the following supplementary facilities: guarantee of delivery by a fixed date; collection from point of origin; personal delivery to addressee; possibility of changing the destination and address in transit; confirmation to sender of receipt of the item dispatched; monitoring and tracking of items dispatched; personalised service for customers and provision of an à la carte service, as and when required. Customers are in principle prepared to pay a higher price for this service."⁷⁸

The same Commission Notice also highlights the distinctive characteristics of the express mail market, when compared to the general letter service market, outlining mainly the 'value-added' provided by such services, based principally on a "faster and more reliable collection, transportation and delivery of the postal items". It also reiterates that such services may also have some of the following characteristics: "guarantee of delivery by a given date; collection from the sender's address; delivery to the addressee in person; possibility of a change of destination and address in transit; confirmation to the sender of delivery; tracking and tracing; personalised treatment for customers and the offer of a range of services according to requirements."⁷⁹

In the Postal Services General Regulations it is clearly outlined that express mail services do not fall within the scope of the universal service.⁸⁰ Nonetheless, the current legal and regulatory framework does not provide a clear definition of what constitutes an express mail service.

In order to introduce more clarity the MCA proposed to define (for regulatory and authorisation purposes) express mail services as consisting, of the faster and more reliable collection, transportation and delivery of postal articles characterised throughout by a degree of speed, tracking and managerial control throughout the supply of the service (i.e. from acceptance to delivery) when compared to that of the fastest standard category of the basic universal service.

Moreover, the MCA proposed that "local express mail" should consist of postal articles originating from a sender in Malta and intended for delivery within Malta within the same working day.

Furthermore, the MCA proposed that "cross-border express mail" should be defined as postal articles:

- originating from a sender in Malta and intended for delivery to a destination outside Malta at a rate faster than the published delivery standard for priority cross border postal articles dispatched by the USP;
- originating from a sender outside Malta and intended for delivery to Malta at a rate faster than the published delivery standard for priority cross border postal articles within the universal service and delivered within the same working day of arrival in Malta.

⁷⁸ Refer to the European Commission (1998), *Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain state measures relating to postal services*. Brussels: European Commission, Official Journal of the European Communities (C 039, 06/02/1998), pp. 2-18

[[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0206\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0206(01):EN:HTML)]. Refer to **section 1: Definitions**.

⁷⁹ Op. cit., par. 2.4

⁸⁰ Refer to regulation 46(2).

In addition, the MCA sought to define further the defining characteristics of the express mail service, in that it must:

- be clearly identified by the postal operator as a service providing accelerated delivery;
- have the express characteristic of the service clearly established in the terms and conditions of the service;
- have additional value-added over the services falling within the scope of the universal service involving, amongst others, a premium price for a better quality of service;
- include priority handling, tracking and managerial control throughout the supply of the service (i.e. from acceptance to delivery);
- allow end-to-end tracking of the postal article by the sender or receiver from acceptance to delivery; and
- upon delivery of each express mail item, the postal operator must obtain written acknowledgement of delivery from the person receiving the express mail item.

5.2 Summary of Respondents' Views

The Express Association of Malta commented that *"the consultation paper does not really explain why a need should be for an own Maltese definition of express services. If the rationale is to provide a definition adapted to the Maltese market, which is understandable, the final definition should be in any event as close as possible to the European one."*

The Express Association also noted that the *"definition only accepts same day delivery as an express service (local and inward cross-border). This means that Time Definite Services, which are classical express services, would no longer be recognised as express services . . . Express services are defined by greater speed and reliability as compared to the universal postal service. Time Definite Services clearly meet these criteria along with other ones, such as track and trace, flexible invoicing, re-routing etc."*

Consequently, the Association proposed that the definition for local and inbound cross-border express mail should be amended, by removing the reference that these should be delivered within the same working day, to these being delivered *"within 24 hours and or until noon the next day."*

On this point MaltaPost also commented that *"when one speaks of 'same working day', one needs to take heed of the operational cut-off times. For instance, if an article arrives in Malta for delivery in Malta at 23.30 hrs, it is presumed that there will be 'next day delivery', and not 'same-day delivery'. So for regulatory purposes, if the cut-off times is 16.00 hrs, any articles deposited with operators after 16.00 hrs, and delivered on the next working day would be deemed to have respected the 'same working day' requirement for the purposes of these definitions."*

In its definition the MCA had also indicated as one of the characteristics of an express mail service the "additional value-added over the services falling within the scope of the universal service involving, amongst others, a premium price for

a better quality of service.” In this respect, the Express Association commented that the European definition only says that “customers are in principle prepared to pay a higher price.”

The Association commented that “an actual higher price is not a pre-condition for an express or value added and not interchangeable service. What matters in fact is the customer’s willingness (in principle) to pay a higher price. So even, if not ‘premium’ priced, the service remains an express service as long as the customer would continue using it, even if charged a price exceeding the standard service price. Moreover, when assessing whether a service is interchangeable or not with the basic service under the price criteria, it must be ensured that the price charged for the basic service has evolved or would evolve in a competitive environment.”

To this end the Association proposed that the clause relating to the additional value added and the premium price customers would have to pay should be removed and instead the following clause inserted: “Customers are in principle prepared to pay a higher price.”

Concluding, the Association remarked that the “MCA (draft) definition is departing substantially from the definition of express service in the European legislation and precedents with the result that express services that are appreciated as such throughout Europe would be excluded from the definition.”

MaltaPost also remarked that the end-to-end tracking referred to in the definition should be understood in a way that “this may also include manual tracking, and not necessarily only electronic tracking, as long as the consumer can check on the article, whether directly or through contacting the operator.”

5.3 MCA Position and Decision

As mentioned in the consultation paper the local legislative and regulatory framework does not provide a clear definition for express mail services. The MCA is of the opinion that a clear definition would provide more clarity for regulatory and authorisation purposes.

As stated in the Regulations it is clear that the express mail services do not fall within the scope of the universal service.⁸¹ This is due to the greater speed and reliability (from acceptance/collection to distribution), and to the added value features attributed to this service⁸², which go beyond those associated with the universal postal service.

Given that this sector is already competitive the MCA adopts a light touch regulatory approach to these services, which is also manifest in the different and more simplified authorisation procedure required from operators in this area (see **Table 1** above), when compared to services being provided within the scope of the universal service.

The definition proposed by the MCA in the consultation paper is based on recital 18 of the Postal Services Directive 97/67/EC, and on the European Commission’s Notice on the application of competition rules to the postal sector and on the assessment of certain State measures relating to postal services.

⁸¹ Refer to regulation 46(2) of the Postal Services (General) Regulations.

⁸² Value added in whatever form it takes and which involves payment of a premium price for a better quality of service (e.g. financial protection against all risks of physical shipment loss, delay or damage, from any external cause).

Basing itself on the recital of the Postal Services Directive and on the Notice by the European Commission, the MCA sought to articulate a practical definition which could give a clearer view as to the nature of express mail services, on the basis of a clear set of criteria. The importance of such an exercise lies in the fact that a lighter regulatory regime is applicable to providers providing services outside the scope of the universal service.

The definition originally proposed by the MCA stated that only same day delivery services qualify as express services, for both local and inward cross-border express mail services, without clarifying what is meant by same day delivery. After having made the necessary considerations, the MCA is of the opinion that it would be appropriate to amend the definition to define better what is meant by "delivery within the same working day" in the context of express mail services.

With respect to the premium price that customers are expected to pay the MCA notes that the wording used by the European Commission in 1998 in its Notice on the application of the competition rules in the postal sector is that "*customers are in principle prepared to pay a higher price for this service.*"⁸³ The higher price for such services however is attributable to the added service features provided by express mail services. In fact, in addition to the faster and more reliable collection, transportation and delivery of the postal articles, an express mail service is characterised by the provision of some or all of the following supplementary services: guarantee of delivery by a given date; collection from the sender's address; personal delivery to addressee; possibility of changing the destination and address in transit; confirmation of receipt of the item dispatched; monitoring and tracking of items dispatched; personalized service for customers and personalized provision of an à la carte service as and when required.⁸⁴

Moreover, in recital 18 of the Postal Services Directive 97/67/EC the Commission indicated that "whereas in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay."

A premium price to be paid for such services, when compared to services offered within the scope of the universal service, may be justified as there are extra costs involved in providing these added value features. The MCA acknowledges the arguments put forward by the Express Association that while a premium price may actually reflect a higher quality of service, this should not be a pre-condition when offering such services.

Furthermore, the MCA is of the opinion that the wording proposed by the MCA's definition conveys, in a clearer and more practical manner, the provisions contained in the European Commission's Notice of the application of the competition rules and in the recital of the Postal Services Directive.

The MCA notes that end-to-end tracking does not necessarily entail only electronic tracking, as long as the customer (both sender and receiver) can monitor the progress towards delivery of a particular item (e.g. via telephone, e-mail, SMS tracking). However, the MCA would also wish to point out that it is more convenient for customers if various methods of tracking are provided to the customer.

⁸³ Refer to the European Commission (1998), op.cit., pp. 2-18 [[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0206\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0206(01):EN:HTML)].

⁸⁴ Ibidem.

This definition is relevant to those postal operators who may be subject to an authorisation to provide postal services falling outside the scope of the universal service.

Decision 4 – Express Mail Services

The MCA will use the definition below when determining whether a service can be classified as an express mail service, therefore falling outside the scope of the universal postal service.

1. Express mail services consist of the faster and more reliable acceptance/collection, handling, transportation and distribution of postal articles when compared to that of the fastest standard category of the basic universal postal service.

“Local express mail” means a postal article originating from a sender in Malta and intended for delivery to an addressee in Malta within 24 hours.⁸⁵

“Cross-border express mail” means a postal article:

- originating from a sender in Malta and intended for delivery to a destination outside Malta at a rate faster than the published delivery standard for priority cross border postal articles within the universal postal service;
 - originating from a sender outside Malta and intended for delivery to Malta at a rate faster than the published delivery standard for priority cross border postal articles within the universal postal service and delivered within 24 hours after arrival in Malta.⁸⁶
2. In addition to the greater reliability and speed throughout the supply of the service (as referred to in **point 1** of this **Decision 4**), an express mail service must also include the following set of supplementary characteristics:
 - be clearly identified by the postal operator as an express postal service from acceptance to delivery (i.e. it is the clear intention of the sender that the postal article is sent via an express mail service);⁸⁷
 - have the express characteristic of the service throughout the supply of the service (from acceptance to delivery), clearly established in the terms and conditions of the service;

⁸⁵ The wording in the proposed direction read as follows: “Local express mail” means a postal article originating from a sender in Malta and intended for delivery within Malta within the same working day.

⁸⁶ The wording in the proposed direction read as follows: “originating from a sender outside Malta and intended for delivery to Malta at a rate faster than the published delivery standard for priority cross border postal articles within the universal service and delivered within the same working day of arrival in Malta.”

⁸⁷ The clause inserted in brackets was included in the decision to further explain what is meant by the identification required.

- have a guaranteed pre-set delivery time as agreed between the express mail service provider and the sender of the postal article;⁸⁸
- include priority handling, tracking and managerial control throughout the supply of the service (i.e. from acceptance to delivery);
- allow end-to-end tracking of the postal article by the sender and receiver from acceptance to delivery;⁸⁹
- upon delivery of each express mail item, the postal operator must obtain written acknowledgement of delivery from the person receiving the express mail item; and
- have additional value-added features over the services falling within the scope of the universal service involving, amongst others, the possibility of a premium price for a better quality of service.⁹⁰

Decision 4 is effective on publication of this Decision Notice.

⁸⁸ This clause was not originally included in the MCA's proposal. It is being explicitly set out in this decision that postal services having a guaranteed pre-set delivery time should be considered as express mail services.

The MCA notes that such guarantees should be accompanied by appropriate compensation mechanisms (such a mechanism must be made known to the sender) for not meeting the guaranteed pre-set delivery time as agreed with the customer.

⁸⁹ I.e. the tracking of the postal article from acceptance/collection to the time the postal article is delivered - enabling the identification of the status of items and information to the client and the provision of full delivery details.

⁹⁰ E.g. liability guarantee by way of insurance or other means whereby the sender has prior knowledge of the compensation formula for loss, delay or damage, the option of changing the destination and address in transit and other types of personalised services.

6. Conclusion

The gradual liberalisation of the postal sector leading to full market opening by the end of December 2012, coupled with the increased preference of customers for different forms of postal services, has started to see the entry into the postal market of postal service providers operating within the scope of the universal service in addition to MaltaPost Plc as the universal service provider (USP).

This warranted from the MCA, as the national regulatory authority responsible for postal services in Malta, the need to further explore and clarify certain issues. This was required to ensure further regulatory clarity which is necessary for the effective functioning of the postal market.

This decision consequently: (i) defines the services which should be considered to fall within the scope of the universal service; (ii) clarifies the role of the bulk mail product within the universal service; and (iii) defines express mail services.

Given MaltaPost's dominant position in the provision of postal services falling within the scope of the universal postal service and the fact that the postal market will be fully liberalised by the end of 2012, the MCA believes that MaltaPost should continue to be subject to *ex-ante* regulation to ensure that consumers' and potential competitors' interests are safeguarded and to ensure a smooth transition to a competitive environment. The MCA is committed to monitoring the development of competition in the postal market to ensure that the universal service is safeguarded.

As mentioned above it must also be stated that the MCA is working on a proposal to review its regulatory framework to further facilitate the transition from a partially liberalised environment to a competitive market in light of full market opening. Until such a framework is implemented it is important that there are in place regulatory provisions to safeguard the interests of postal users and competitors alike in the process to full market opening.

The postal market is evolving constantly. To this end the MCA will be monitoring closely the development of the market in order to ensure that any regulation of the market remains appropriate and proportionate in light of the changing market conditions.

The MCA will monitor the robustness of this decision and may make periodic adjustments as necessary should circumstances warrant.

Appendix 01: The Universal Postal Service

This Appendix sets out the specific postal services that make up the universal postal services in Malta. The table depicts the **current** range of postal products which MaltaPost, as the sole USP, is obliged to provide under its USO.⁹¹

Universal Postal Service ⁹²	Specific Conditions under which the service must be offered by the USP ⁹³	Delivery characteristics
Inland Mail		
Letters	The clearance, sorting, transport and distribution of postal articles up to 2kg.	Mail delivered in line with the MCA delivery targets ⁹⁴ via a range of payment methods e.g. stamped, franked etc., including a priority bulk mail service.
Bulk Mail	Bulk letter mailing services	Refer to MCA's Decision on minimum standards and QoS targets to be achieved by MaltaPost (ordinary mail, bulk mail, registered mail, parcel post)
Postcards		
Printed Papers	Weight limit for printed papers is 2kg but packets of books or pamphlets up to 5kg may be sent as printed papers.	
Direct Mail	Direct mailing service	
Locally Registered Newspapers		http://www.maltapost.com/filebank/Schemes/BulkPostingSchemeTRK30Nov10.pdf
Parcels	The clearance, sorting, transport and distribution of postal parcels up to 20 Kg	Same QoS indicated above with an additional day due to the counting and invoicing element related to the service.
Articles for the use of the blind	Including parcels containing solely articles for the blind	
Business reply service		

⁹¹ The USP shall meet the requirements with respect to provision of the universal postal service as specified in Article 18.

⁹² Depicts the list of postal services which form part of the Universal Postal Service in Malta and the standards with which these services are to comply.

⁹³ Specific conditions emerge from the Act, Regulations, MaltaPost's licence and MCA's Decision Notices on the provision of the universal service.

⁹⁴ The quality standards for inland mail are established in relation to the time limit for routing measured from the end to end for postal items of the fastest standard category according to the formula D+n, where D represents the date of deposit and n the number of working days which elapse between that date and that of delivery of the addressee. D+1 in this case represents one (1) working day from the date of deposit to delivery to the addressee.

Universal Postal Service ⁹²	Specific Conditions under which the service must be offered by the USP ⁹³	Delivery characteristics
		Refer to MaltaPost's Business Reply Service Scheme http://www.maltapost.com/page.asp?p=9472&l=1
Secure and Support Services (to Inland Mail)		
Re-direction to other addresses	The service starts to be offered within a maximum period of ten (10) working days after a request in writing and the necessary documentation is received.	Same QoS indicated for the relevant postal article, with an additional day due to the transfer of postal articles from the original address to the new directed address or PO Box.
Re-direction to PO boxes		Refer to MaltaPost's Redirection of Mail Scheme http://www.maltapost.com/page.asp?p=9472&l=1
Registration and insurance of postal article	To be offered at all post offices and sub post offices for postal articles (registered and insured service is specified by the European Directive) The facility to track and trace registered postal articles.	Refer to MCA's Decision on minimum standards and QoS targets to be achieved by MaltaPost. http://www.mca.org.mt/filesystem/pushdocmqmtfile.asp?id=1469&source=3&pin= Refer to MaltaPost's Registered Postal Articles Scheme. http://www.maltapost.com/page.asp?p=9472&l=1
Certificate of posting of unregistered postal article		Refer to MCA's Decision on minimum standards and QoS Targets to be achieved by MaltaPost.
Advice of Delivery of a registered letter		This is returned to the sender upon the signature of the addressee or if the registered letter cannot be delivered after four attempts on four consecutive working days.
Certificate of loss or damage		-
Renting of P.O. box		Refer to MaltaPost's Scheme P.O. Box Scheme http://www.maltapost.com/page.asp?p=9472&l=1
Withdrawal of Postal Article	On receiving a request by a sender to withdraw a postal article, the USP would grant such a service within a maximum period of 24 working hours, subject to the confirmation that the request is made by the real sender.	-

Universal Postal Service ⁹²	Specific Conditions under which the service must be offered by the USP ⁹³	Delivery characteristics
Poste Restante ⁹⁵	<p>This service shall be offered to: (a) travellers, tourists and foreigners of no fixed abode; (b) persons who reside within an area which is not accessible for delivery by postman; and (c) persons who in the opinion of the USP cannot for a good and sufficient reason conveniently receive their correspondence by postman or through a private delivery box.</p> <p>The caller of <i>poste restante</i> shall furnish proof of his identity and any other particular that may be reasonably required by the addressee.</p>	-
Inbound Cross Border Mail		
Letter and other postal articles	This includes postal items up to 2 kg and includes also registered articles.	MaltaPost has obligations under the Universal Postal Union (UPU) to handle inbound international mail.
Parcels (2kg to 20kg)		Refer to MCA's Decision on minimum standards and QoS Targets to be achieved by MaltaPost.
Secure services for Inbound Cross Border Mail		
Redirection to other addresses	The service starts to be offered within a maximum period of ten (10) working days after a request in writing and the necessary documentation is received.	-
Redirection to P.O boxes		-
Outbound Cross Border Mail⁹⁶		
Letters		Refer to MCA's Decision on minimum standards and QoS Targets to be achieved by MaltaPost.
Parcels		
Postcards		

⁹⁵ This is a service whereby a postal article is addressed to a specific post office in Malta to be called for by the addressee.

⁹⁶ The USO includes the requirement to provide universal cross-border services, which means that the USP must arrange for postal articles to be conveyed to overseas countries and delivered by universal service providers in those countries and it must receive postal articles from universal service providers in other countries and deliver them in Malta.

Universal Postal Service ⁹²	Specific Conditions under which the service must be offered by the USP ⁹³	Delivery characteristics
Printed Papers and small packets		
Periodicals (locally registered)		
Secure and Support Services (to the outbound cross border mail)		
Registration of postal article	To be offered at all post offices and sub post offices (registered and insured service is specified by the European Postal Directive). The facility to track and trace registered postal articles.	Refer to MCA's Decision on minimum standards and QoS Targets to be achieved by MaltaPost
Certificate of posting of unregistered postal article		-
Advice of delivery of a registered letter		-
Certificate of loss or damage		-
Withdrawal of postal articles		-
Re-direction to other addresses	The service starts to be offered within a maximum period of ten (10) working days after a request in writing and the necessary documentation is received.	Same QoS indicated for the relevant postal article, with an additional day due to the transfer of postal articles from the original address to the new directed address or P.O Box.
Re-direction to PO boxes		